REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

STA. ROSA FARM PRODUCTS CORPORATION,
Respondent.

CTA EB NO. 2542
(CTA Case No. 9932)

Present:
Del Rosario, *P.J.,*
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, *and*
Ferrer-Flores, *JJ.*

Promulgated:
MAR 10 2023 11:45am

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] seeking nullification of the Decision dated February 3, 2021[2] (assailed Decision) and the Resolution dated July 16, 2021[3] (assailed Resolution), all promulgated by the First Division of this Court (Court in Division) in CTA Case No. 9932 entitled *"Sta. Rosa Farm Products Corporation vs. Commissioner of Customs"* which partially granted the Petition for Review of respondent and denied for lack of merit the petitioner's Motion for Reconsideration.

The dispositive portions of the assailed Decision and Resolution read as follows:

[1] Rollo, CTA EB No. 2542, pp. 7-56, with annexes.
[2] Ibid., pp. 58-78.
[3] Ibid. pp. 80-85.

Decision:

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent's Decision dated August 16, 2018, affirming the Consolidated Order dated July 13, 2018 of the District Collector, MICP, is hereby **REVERSED** and **SET ASIDE.**

Respondent is **ORDERED TO REFUND** petitioner with the proceeds of the sale in the amount of Php133,102,000.00, less the corresponding customs duties imposable on the subject shipments of rice, and other applicable expenses and obligations, in accordance with Section 1143 of the CMTA or RA No. 10863.

SO ORDERED."

Resolution:

"**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner is the duly appointed Commissioner of the Bureau of Customs (BOC) vested under the appropriate laws with the authority and responsibility for the exercise of the mandate of the BOC and the discharge of its powers and functions. He was impleaded as the respondent in CTA Case No. 9932 by reason of his Decision dated August 16, 2018 in Seizure Identification Nos. 047-2018, 048-2018, and 049-2018. He holds office at the OCOM Building, South Harbor, Gate 3, Port Area, Manila. He is represented in this suit by the Office of the Solicitor General (OSG) with office address at #134 Amorsolo Street, Legaspi village, Makati City.[4]

Respondent Sta. Rosa Farm Products Corporation is a domestic corporation organized and existing under Philippine laws, with principal office at Ground Floor Doña Rosita Building, 2025-2031 Ipil Street, Sta. Cruz, Manila.[5] It is represented by its President, Mr. Jomerito S. Soliman, and Atty. Reynaldo S. Nicolas with office address at #29 Creekside Drive, Mintcor Southrow, West Service Road, Cupang, Muntinlupa City,[6] in collaboration with Atty. Alejandre

[4] Petition for Review, p. 3.
[5] Decision, p. 1.
[6] Comment on the Petition for Review (With Notice of Change of Address of Lead Counsel), p. 12.

C. Dueñas Duenas II of Flaminiano Arroyo & Dueñas with office address at 1002 One Corporate Centre, Meralco Ave. cor. Doña Julia Vargas, Ortigas Center, Pasig City.[7]

THE FACTS

The relevant antecedents stated in the assailed Decision[8] are as follows:

"On several dates in May 2018, three (3) shipments totaling 150x20' containers STC 5,000 bags white rice 5% broken Red Stallion Brand, consigned to petitioner, arrived at the Manila International Container Port (MICP) as follows;

B/L No.	Import Entry No.	Date
GTD0403844	C-132552-18	20 May 2018
GM0403498	C-132955-18	21 May 2018
EGLV050800430758	C-133722-18	22 May 2018

In its letter dated June 4, 2018, petitioner asked the National Food Authority (NFA) for its assistance and approval allowing the former to process the release of the aforesaid shipments.

On June 13, 2018, various customs officers in MICP, namely: Mr. Greg Serrano, COO III, Mr. Terencio Comon, COO V, Mr. Ronald Gabriel T. Reyes, OIC Formal Entry Division, and Mr. Fidel Villanueva IV, Deputy Collector for Operations, issued Reports of Seizure against the subject shipments for alleged lack of NFA Import Permits prior to importation. Specifically, as alleged in the Reports, the cause of seizure was "LACK OF NFA IMPORT PERMIT PRIOR TO IMPORTATION IN RELATION TO SECTION 1113 OF CMTA". These Reports were approved by Atty. Vener S. Baquiran, District Collector, MICP, who issued the corresponding *Warrants of Seizure and Detention* against the subject shipments. CMTA refers to the Customs Modernization and Tariff Act which superseded the Tariff and Customs Code of the Philippines.

Petitioner then appealed to respondent the said seizure of the subject shipment, through the letter dated June 14, 2018.

On June 27, 2018, a preliminary conference for the seizure proceedings was held, wherein the government prosecutor and the

[7] Petition for Review, p. 3.
[8] Ibid., pp. 2-7, Citations omitted.

counsels for the petitioner appeared. The parties agreed for the consolidation of the seizure proceedings since they involved the same parties, issues, and violations.

During the said conference, the prosecution presented and marked the evidence enumerated below:

Exhibit	S.I. No. 047-2018
"1"	SAD C-133722 composed of 2 pages with dorsal portion
"2"	Certificate of Weight and Inspection of the Quality of Rice
"3"	Phytosanitay Certificate
"4"	Certificate of Origin
"5"	SPS Import Clearance consisting of 2 pages
"6"	Packing List
"7"	Invoice No. CN 190399
"8"	Bill of Lading No. 050800430786
"9"	Revised Supplemental Declaration on Valuation
"10"	Document Processing Time Form
"11"	Temporary Assessment Notice
"12"	Report of Seizure
"13"	Warrant of Seizure and Detention (WSD) No. 047-2018
"14"	Fumigation Certificate

Exhibit	S.I. No. 048-2018
"1"	SAD C-132552
"2"	Plant Quarantine Service – DA Border Inspector's Report consisting of 3 pages
"3"	Phytosanitary Certificate
"4"	SPS Import Clearance consisting of 2 pages
"5"	Certificate of Weight and Inspection of the Quality
"6"	Certificate of Origin
"7"	Bill of Lading No. GTD0403844
"8"	Packing List
"9"	Invoice No. CN190401
"10"	Revised Supplemental Declaration on Valuation
"11"	Document Processing Time Form
"12"	Temporary Assessment Notice
"13"	Report of Seizure

"14"	WSD No. 048-2018
"15"	Fumigation Certificate

Exhibit	S.I. No. 049-2018
"1"	SAD C-132955
"2"	Department of Agriculture - DA Border Inspector's Report
"3"	SPS Import Clearance
"4"	Fumigation Certificate
"5"	Certificate of Weight and Inspection of Quality of Rice
"6"	Certificate of Origin
"7"	B.L. No. GTD0403498
"8"	Packing List Bill of lading No. 050800430758
"9"	Invoice No. CN 190402
"10"	Revised Supplemental Declaration on Valuation
"11"	Document Processing Time Form
"12"	Temporary Assessment Notice
"13"	Report of Seizure
"14"	WSD No. 047-2018

Petitioner's counsels adopted the aforesaid prosecution's evidence as its exhibits, except for Document Processing Time Form, Report of Seizure and Warrant of Seizure and Detention (WSD). In addition, the following exhibits were marked for petitioner, to wit;

Exhibit	Description
"K"	News report in Philippine Star
"L"	News report in Politics.com.ph
"M"	News report in Philippine Star
"N"	News report in GMA News Center
"O"	News report in CNN dated 23 April 2018
"P"	News report in ABS-CBN News Online
"Q"	News report in Manila Times Online
"R"	Letter of Mr. Jomerito Soliman, petitioner's President, to NFA Administrator dated 30 April 2018
"S"	Letter dated 2 May 2018 od Mr. Soliman to the President, thru Secretary Bong Go; to Secretary of DOF; and to respondent

"T"	Letter of Mr. Soliman to DOF dated 2 May 2018, copy furnished Department of Agriculture (DA) and BOC.
"U"	Adm. Order of NFA to be signed by the president
"V"	Letter of Mr. Soliman to the president, through Secretary Bong Go
"W"	Letter to NFA Administrator by petitioner
"X"	Letter to NFA Administrator dated 4 June 2018
"Y"	Letter dated 14 June 2018 to respondent, copy furnished the President, through Secretary Bong Go and NFA Administrator

Thereafter, petitioner submitted its Consolidated Verified Position paper on July 4, 2018, putting forward the following claims: (a) the subject importations may be released by payment of proper duties and charges considering that the President of the Philippines has already lifted the rice import quota; and (b) the subject shipments may be released conditionally by payment of proper duties and taxes and 30 % fine pursuant to Section 1124 of the CMTA.

On July 12, 2018, the prosecution submitted its Comment to the Position Paper which argues that: (a) the Position Paper is a mere scrap of paper because the prosecution was not furnished a copy ; (b) the subject shipments are regulated importations covered by existing NFA rules and regulations; and, (c) the release of the subject shipments by way of settlement is contrary to law.

Petitioner then informed the NFA of such seizure proceedings through the letter dated July 13, 2018. The NFA replied via letter dated July 17, 2018 that it has no existing guidelines/policy on the importation of rice outside of the Minimum Access Volume (MAV) or out-quota as of the said date.

On July 13, 2018, the District Collector, MICP, issued the Consolidated Order directing the forfeiture of the subject shipments in favor of the government. Through its Letter dated July 16, 2018, however, petitioner disputed the said forfeiture and objected to the scheduled public action of the subject rice importations.

On July 17, 2018, the subject shipments were sold at public auction. The results thereof are as follows:

a. For Sale Lot No. 7-021-2018

   Highest bid price by Mangga Multi-Purpose Cooperative– ₱44,500,000.00

b. For Sale Lot No. 7-022-2018

   Highest bid price by JSP Rice Mill- ₱44,300,000.00

c. For Sale Lot No. 7-023-2018

   Highest bid price by Manna Consumer- ₱44,302,000.00

In the letter dated 27, 2018, petitioner's President, Mr. Jomerito Soliman, requested the NFA Administrator for another letter clarifying that the previous Letter dated July 13, 2018 is intended as an authorization for the BOC to process the subject out-quota rice importations provided the proper out-quota tariff rates are paid and collected by the BOC.

In the Letter dated July 27, 2018, the NFA Administrator clarified that: 'From the foregoing, the out-quota importation of Sta. Rosa Farm Products may well be within the abovementioned Presidential Directive, provided that the importer will pay the tariff rate of 50% as imposed by the BOC.'

Respondents then filed criminal complaints for smuggling against petitioner.

In his Decision dated August 16, 2018, respondent affirmed the Consolidated Order dated July 13, 2018 of the District Collector, MICP. Respondent ruled that the subject rice shipments require Import Permit from the NFA; and that forfeiture of the subject shipments of rice is proper."

On September 21, 2018, respondent filed a Petition for Review[9] before the Court in Division praying that the Petition for Review be given due course; that judgment be rendered setting aside the assailed Decision dated August 16, 2018 of petitioner and declaring as follows: (a) there is no valid ground to order the forfeiture of the subject out-quota rice importations, especially considering that they are in line with the Presidential Directive and conditional offer of settlement by payment of 30% fine has been made; (b) the proper costs of the

[9] Docket, CTA Case No. 9932, pp. 10-46, with Annexes.

petitioner's rice importations forfeited by the BOC in the three (3) forfeiture cases and sold in public auction during the pendency of the cases be refunded by the BOC in the total amount of Php112,874,700.00 subject to compliance with relevant laws and regulations.

On October 12, 2018, the Court in Division issued Summons[10] to petitioner.

On October 26, 2018, the Court received petitioner's "Formal Entry of Appearance with Motion for Extension to File Answer," praying that petitioner be given an extension of thirty (30) days from November 6, 2018 or until December 6, 2018, within which to file its Answer.

On October 30, 2018, the Court in Division issued an Order[11] granting petitioner's "Formal Entry of Appearance with Motion for Extension to File Answer."

On December 4, 2018, the Court received petitioner's "Answer."[12]

On January 16, 2019, the Court issued a Resolution[13] referring the case for mediation proceedings.

On February 11, 2019, the Court received Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) Form 6 No Agreement to Mediate, stating that the parties decided not to have their case mediated by the PMC-CTA.[14]

The Pre-Trial Conference of the case was held on May 16, 2019.[15]

On May 31, 2019, the parties filed their Joint Stipulation of Facts and Issues.[16]

In the Resolution dated June 13, 2019, the Court approved the Joint Stipulation of Facts and Issues and deemed the termination of the Pre-Trial Conference.[17]

The Pre-Trial Order was issued on July 18, 2019.[18]

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[10] Ibid., p. 78.
[11] Ibid., p. 77.
[12] Ibid., p. 80-101, with "Annexes."
[13] Ibid., pp. 145-146.
[14] Ibid., 144.
[15] Ibid., pp. 263-266.
[16] Ibid., pp. 620-631.
[17] Ibid., pp. 634-635.
[18] Ibid., pp. 643-657.

In the Joint Stipulation of Facts and Issues, the parties agreed that the following issues be resolved by the Court in Division: "Whether the subject rice importations complied with the prevailing laws, regulations and policies at the time of importation, particularly on the need to secure an Import Permit; and Whether the forfeiture of the subject rice importations and the subsequent sale at public auction are valid and legal."

After trial on the merits and upon submission of parties' respective memoranda[19], the case was submitted for decision on March 12, 2020.[20]

On February 3, 2021, the Court in Division rendered the questioned Decision.[21] On July 16, 2021, the Court in Division issued the assailed Resolution.[22]

On October 29, 2021, petitioner filed by registered mail before the Court *En Banc* a "Motion for Extension (of Period to File Petition for Review)[23] praying that the period to file Petition for Review be extended for fifteen (15) days from November 2, 2021, or until November 17, 2021.

On November 17, 2021, petitioner filed by registered mail the instant Petition for Review.[24]

On November 26, 2021, the Court issued a Minute Resolution stating that the "Motion for Extension (of Period to File Petition for Review)"[25] is deemed granted.

In the Resolution[26] dated March 10, 2022, respondent was directed by the Court *En Banc* to file its Comment in this case.

On March 25, 2022, respondent filed its "Comment on the Petition for Review (With Notice of Change of Address of Lead Counsel)."[27]

In the Resolution[28] dated April 12, 2022, the Court *En Banc* deemed the instant case submitted for decision.

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[19] Ibid., pp. 1021-1058 and 1067-1101.
[20] Ibid., pp.1111-1114.
[21] Ibid., pp. 1117-1137.
[22] Ibid., pp. 1165-1170.
[23] Rollo, CTA EB No. 2542., pp. 1-5.
[24] Ibid., pp. 7-56.
[25] Ibid., p. 257.
[26] Ibid., pp. 598-599.
[27] Ibid., 601-613.
[28] Ibid., pp. 615-616.

THE ISSUE

The main issue in this case is "***Whether the Court in Division erred in partially granting the Petition for Review and in ordering the refund of the proceeds of the sale in the amount of ₱133,102,000.00, less the corresponding customs duties imposable on the subject shipments of rice, and other applicable expenses and obligations, in accordance with Section 1143 of the CMTA or RA No. 10863.***"

THE ARGUMENTS OF THE PARTIES

Petitioner submits that the President's alleged pronouncements on the lifting of the quota on rice importation did not repeal nor alter the then applicable laws and regulations that require a duly issued Import Permit from the NFA; that the President's "unofficial" pronouncements do not bind the legislative and judicial branches of the government with respect to the legality of the subject rice importation; that respondent should have secured the necessary Import Permit from the NFA; that the subject importations were made in violation of the then applicable laws and are, therefore, subject to seizure and forfeiture in favor of the government; that respondent's importation violated NFA Memorandum Circular No. AO-2017-08-002 dated August 4, 2017, in relation to Republic Act No. 8178, otherwise known as the Agricultural Tariffication Act, and Customs Memorandum Order (CMO) No. 20-2001 dated August 27, 2021; that the alleged expiration of the Waiver relating to the Special Treatment of Rice does not automatically invest the respondent with unbridled authority to import rice; that the requirements of an Import Permit applies to all importations of rice whether "in-quota" or "out-quota;" and that the subject goods were clearly imported in violation of applicable laws and were rightfully forfeited in favor of the government.

On the other hand, respondent counter-argues that the lifting of the quota on rice importation is not just the President's media pronouncements but policy pronouncements in his speeches, the transcripts of which are published in the official website of the Presidential Communications Operations Office (PCOO); that President Duterte was aware of the expiration of special treatment for rice on 30 June 2017 when he issued Executive Order No. 23; that EO No. 43 and the policy statements on the lifting of the quota on rice importation by the President, implemented the country's commitment under the World Trade Organization (WTO), which means that lack of NFA Minimum Access Volume (MAV) import permits should not lead to forfeiture of rice importations if covered by supporting SPS Import Clearances which are also considered import permits; that respondent's documentary pieces of evidence support its position that NFA Import Permits are not required for the subject rice importations; that the letter of NFA in response to Mr. Soliman's July 27, 2018 letter is intended as an authorization for the BOC to process the subject out-quota rice importations provided the proper out-quota tariff rates are paid and collected by the BOC; that the subject out-quota rice importations were in line with the Presidential

Directive and the NFA has the primary jurisdiction on rice importations pursuant to P.D. No. 4, the BOC should have considered the said NFA clarification as authorization for the BOC to accordingly process the subject out-quota rice importations provided the proper out-quota tariff rate is paid by respondent; and that the Court in Division has acted correctly in promulgating the assailed Decision and Resolution.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition for Review

On February 16, 2021, petitioner received a copy of the assailed Decision. On March 1, 2021, petitioner filed a "Motion for Reconsideration."[29] On July 16, 2021, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on October 18, 2021.

From receipt of the said Resolution, petitioner had until November 2, 2021 within which to file the Petition for Review before the Court *En Banc*. On October 26, 2011, petitioner filed a Motion for Extension dated October 25, 2021, praying for an additional period of fifteen (15) days, or until November 17, 2021 to file the petition. On November 17, 2021, petitioner filed by registered mail the instant Petition for Review. Hence, this Petition for Review was timely filed.

We shall now proceed to determine the merits of the Petition for Review.

A careful review of the arguments raised by the parties in the Petition for Review and the Comment/Opposition shows that they are mere rehash of the arguments in their previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the assailed Decision and, similarly, in the assailed Resolution. The Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments and will elucidate the conclusions of the Court in Division.

Whether the Court in Division erred in holding that the Import Permits are not required in the importation of the subject rice shipments

[29] Motion for Reconsideration, Docket, CTA Case No. 9932, pp. 1138-1150.

Petitioner mainly argues that at the time of the importation of the subject rice shipments, the applicable laws, rules and regulations require importers to secure an Import Permit from the NFA. That since respondent has no Import Permit from the NFA, the subject rice shipments were rightfully forfeited in favor of the government.

After consideration, the Court *En Banc* finds petitioner's argument without merit. When respondent imported the rice shipments on May 20, 2018, May 21, 2018, and May 22, 2018, there was no need for it to secure an NFA Import Permit since the Philippines' Special Treatment for rice has already expired. After the expiration of the Decision on Waiver Relating to Special Treatment for Rice of the Philippines[30] on June 30, 2017, the provisions under the World Trade Organization (WTO) Agreement and its Multilateral Trade Agreements (MTAs) specifically Article XI of the General Agreement on Tariffs and Trade (GATT)[31] were rendered effective, including the prohibition on imposing quantitative restriction on the importation of rice. Thus, the Philippines could no longer impose quantitative restrictions on rice shipment beginning July 1, 2017.

As correctly ruled by the Court in Division in the assailed Decision:

> "By virtue of the Philippines' membership in the WTO, certain restrictions on the entry of agricultural and food products in to the country were either reduced, removed, or made subject to tariff instead. Specifically, Article XI of the 1994 [General Agreement on Tariffs and Trade (GATT)] requires the general elimination of Quantity Restrictions (QRs); while Article XIII of the 1994 GATT entails non-discriminatory application of such restrictions. Thus, as a rule, no QRs are allowed to be imposed by any WTO member in its country.
>
> However, Article 15 of the WTO *Agreement on Agriculture (on Special and Different Treatment)* provides that developing member countries, such as the Philippines, shall have the flexibility to implement reduction commitments over a period of up to ten (10) years. Furthermore, any extension of the Special Treatment can be negotiated, pursuant to Section B(8) of Annex 5; Special Treatment with Respect to paragraph 2 of Article 4, WTO Agreement on Agriculture. Consequently, this Special Treatment temporarily permitted the Philippines to impose QRs on the importation of rice from the years 1995 to 2005.

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[30] World Trade Organization, Decision on Waiver Relating to Special Treatment for Rice of the Philippines, issued on July 25, 2014, (Accessed date: March 8, 2023), https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/932.pdf&Open=True

[31] World Trade Organization, Article XI of the general Agreement on Tariffs and Trade (GATT), (Accessed date: March 8, 2023), https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_gatt47.pdf

With reference to, and consistent with, the WTO Agreement, Republic Act (RA) No. 8178, otherwise known as the *"Agricultural Tariffication Act"*, was enacted on March 28, 1996, amending Presidential Decree No. 4 under Section 5 thereof, giving power to the National Grains Authority, now the NFA, *"to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said imported rice with normal prevailing domestic prices"* and to *"undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government.*

In 2006, pursuant to Article 4.2 and Section B of Annex 5 of the Agreement, the Special Treatment of the Philippines for rice was extended from July 1, 2005 to June 30, 2012. Thereafter, on July 14, 2014, the General Council of the WTO issued the *Decision on Waiver Relating to Special Treatment for Rice of the Philippines*, wherein the above-stated Special Treatment was extended until June 30, 2017.

On April 27, 2017, President Rodrigo Roa Duterte issued Executive Order (EO) No. 23 entitled "EXTENDING THE EFFECTIVITY OF THE MOST-FAVOURED-NATION RATES OF DUTY ON CERTAIN AGRICULTURAL PRODUCTS UNDER REPUBLIC ACT NO. 10863, OTHERWISE KNOWN AS THE CUSTOMS MODERNIZATION AND TARIFF ACT, AND THE OTHER PHILIPPINE COMMITMENTS UNDER THE WORLD TRADE ORGANIZATION DECISION ON WAIVER RELATING TO SPECIAL TREATMENT FOR RICE ON THE PHILIPPINES." One of the whereas clauses of the said EO states that "on 1 July 2017, the Waiver relating to Special Treatment for Rice shall cease to exist." Thus, EO No. 23 was issued in anticipation of the expiration of the extension of the above-stated Special Treatment on June 30, 2017. In any event, Sections 3 and 6 of EO No. 23 provide:

> **SECTION 3. Minimum Access Volume (MAV) commitments on rice.** The MAV commitments of 805,200 MT on rice made in exchange for the waiver shall likewise remain in force and in effect.
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> xxx xxx xxx
>
> **SECTION 6. Effectivity.** This Order shall take effect immediately following its complete publication in the Official Gazettte or in a newspaper of general circulation in the Philippines, and shall be applicable until 30 June 2020 or until such time that a law amending

> certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply.

Relative thereto, the NFA then issued its Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 entitled "GENERAL GUIDELINES IN THE IMPORTATION OF 805,200 METRIC TONS, WHITE RICE UNDER THE MINIMUM ACCESS VOLUME CONTRY SPECIFIC QUOTA (MAV-CSQ) AND THE MINIMUM ACCESS VOLUME OMNIBUS ORIGINS (MAV-OMB) FOR THE YEAR 2017 BY THE PRIVATE SECTOR." The said Memorandum Circular governs, inter alia, the issuance and use of Import Permits (with a prescribed format in Annex 9 thereof) in the importation of rice by the private sector; and explicitly provides, under Part XI(3) thereof, that *"the shipment shall be considered illegal in the event the shipment has no valid import permit."*

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There is no need for petitioner to secure Import Permits from the NFA for the subject shipments

In *Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Francisco T. Duque III, et al.,* the Supreme Court said:

> Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation.** The transformation method requires that an international law be transformed into a domestic law through constitutional mechanism such as local legislation. The incorporation method applied when, by mere constitutional declaration, international law is deemed to have the force of domestic law.
>
> Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that '[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.' Thus, treaties and conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts. *(Underscoring and italics added)*

Based on the foregoing, treaties are transformed into municipal or domestic laws after undergoing the constitutional process of having the same concurred in by at least two-thirds of the members of the Senate.

In this case, the WTO Agreement, including the Multilateral Trade Agreements attached thereto, was concurred in by the Senate through Resolution No. 97. Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws. xxx

xxx xxx xxx

To reiterate, pursuant to the WTO Agreement, WTO member countries like the Philippines are prohibited from imposing QRs on imported products. However, a Special Treatment was accorded to certain licensing as a matter of exception to the rule. The Philippines applied for and was allowed to enjoy Special Treatment for the years 1995 to 2005, or for ten (10) years, and a further extension of seven (7) years until June 30, 2012. Before the expiration of the Special Treatment on June 30, 2012, the Philippines requested for another extension, which was granted on July 24, 2014 through *the Decision on Waiver Relating to Special Treatment for Rice of the Philippines*, wherein the above-stated Special Treatment was extended until June 30, 2017.

Thus, on the basis of the provisions of the WTO Agreement, beginning July 1, 2017, since the Philippines' Special Treatment for rice has already expired, the prohibition from imposing QRs on imported rice has already taken effect. As a consequence, there was no need for petitioner to secure a prior Import Permit from the NFA to import rice, beginning on the said date.

Contrary to the invocation of respondent, this Court cannot readily apply, in this case, the provisions of the Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 of the NFA, specifically as regards the requirement of prior issuance of an import permit for the importation of rice. This must be so because the said NFA issuance is specific, *i.e.*, it refers only to the importation of 805,200 metric tons of white rice **under the MAV country specific quota and the MAV omnibus origins for the year 2017**. Without doubt, the said "MAV" being referred to, was made in compliance with EO No. 23 (series of 2017) issued by the President, wherein the said MAV of 805,200 metric tons of rice are the commitments made by the Philippines "in exchange for the waiver" relating to the Special Treatment of rice.

Relative thereto, pursuant to *Annex A To The Waiver of Decision of 24 July 2014 Relating to Special Treatment for Rice of the Philippines*, the said commitments would refer only to "in-quota" importation of rice, to which a tariff is imposed by the Philippines.

Parenthetically, an "In-Quota Tariff Rate" refers to the tariff rates for the MAVs committed by the Philippines to the WTO under the Uruguay Round Final Act.

Moreover, in its Letter dated July 17, 2018 to Mr. Soliman, the NFA, through its NFA Administrator. Lt. Col. Jason L.Y. Aquino (Ret) PA, stated:

> In line with the President's policy/pronouncements/directives at Malacañang on April 5 & 16, 2018 to lower the price of rice, we admire your good and noble intentions of supporting the government in its efforts to eliminate rice shortage. However, **we would like to inform you that the NFA has no existing guidelines/policy on the importation of rice outside of the Minimum Access Volume of out-quota as of the present time.** *(Emphases and underscoring added)*

Consequently, the NFA's Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 governs only the "in-quota" importations of rice, and does not cover "out-quota" importations thereof or importations of rice outside the MAV prescribed/extended under the above-stated EO. 23 (series of 2017).

In this connection, Section 116 of RA No. 10863 reads:

> SEC. 116. *Free Importation and Exportation.-* **Unless otherwise provided by law or regulation, all goods may be freely imported into** and exported from **the Philippines without need for import** and export **permits**, clearances or licenses. *(Emphases added)*

Consistent with the foregoing provision, there being no law or regulation pertaining to the "out-quota" importation of rice, the latter may be freely imported into the Philippines without need for, *inter alia,* import permits.

In this case, the subject importations of petitioner have been identified by the NFA as "out-quota", in its letter dated July 27, 2018, which states, in part, as follows:

> ... **the out-quota importations of Sta. Rosa Farm Products** may be well within the aforementioned Presidential Directive, provided that the importer will pay the tariff rate of 50% as imposed by the BOC. *(Emphases and underscoring added)*

Verily, since the subject importations of rice were identified as "out-quota" by the NFA there is no need for the latter to issue

import permits therefor under Memorandum Circular No. AO-2017-08-002 dated August 4, 2017.

Neither can this Court apply the Memorandum of Agreement dated December 3, 2010 between NFA and the BOC, wherein it was required that import Authority must be obtained for every imported shipment of rice. Suffice it to state that the said requirement was made during the period wherein the Special Treatment for Rice was still effective; and thus, the same requirement should only apply for the extended period, i.e. until June 20, 2017. A contrary interpretation would be violative of the pertinent provisions of WTO Agreement.

Correspondingly, since at the time of the subject importation of rice in May 2018, it was legal for petitioner to import rice without need of Import Permits from the NFA, there is no valid basis to support the seizure and forfeiture proceedings, as well as the public auction, which were conducted by the BOC. Simply put, the said proceedings were done illegally, in view of the fact that there was no need for petitioner to secure NFA Import Permits for the said importation of rice."[32]

Time and again, the Supreme Court has ruled on the importance of the Philippines' adherence to its treaty obligations. In ***Deutche Bank AG Manila Branch v. Commissioner of Internal Revenue,***[33] it was held that:

"**Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.**

xxx xxx xxx

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, non-compliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the

[32] Decision, pp. 12-18. Citations omitted.
[33] G.R. No. 188550, 19 August 2013.

> imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief." *(Emphases supplied.)*

In view of the foregoing, the Court *En Banc* finds that petitioner had no legal basis to seize the rice shipments for lack of NFA Import Permits. Thus, petitioner's forfeiture and disposal of the subject rice shipments by public auction sale are void.

Since the forfeiture and subsequent public auction sale of the rice shipments are void, the Court *En Banc* rules that respondent is entitled to a refund of the proceeds received by petitioner on the public auction sale in the amount of ₱133,102,000.00[34] less the applicable costs of expenses enumerated under letter (a) to (f) of Section 1143 of the CMTA:

> "SECTION 1143. Disposition of Proceeds. – The following expenses and obligation shall be paid from the proceeds of the sale in the order provided:
>
> (a) Customs duties, except in the case of forfeited goods;
> (b) Taxes and other charges due the government;
> (c) Government storage charges;
> (d) Expenses for the appraisal, advertisement, and sale of auctioned goods;
> (e) Arrastre and private storage charges and demurrage charges; and
> (f) Freight, lighterage or general average, on the voyage of importation, of which due notice shall given to the District Collector.
>
> The Commissioner is authorized to determine the maximum charges to be recovered by private entities concerned under subsections (e) and (f) of this section."

Although Section 1143(a) of the CMTA provides that no customs duties will be imposed on the forfeited goods, the same will not apply in this case. The rice shipments herein would still have to be subjected to customs duties because the Court in Division has ruled, and the Court *En Banc* herein upholds that the forfeiture of the subject rice shipments was illegally conducted, and thus, the said proceeding is deemed legally non-existent.

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[34] ₱44,500,000.00 (For Sale Lot No. 7-021-2018) + ₱44,300,00.00 (For Sale Lot No. 7-022-2018) + ₱44,302,000.00 (For Sale Lot No. 7-023-2018) = ₱133,102,000.00

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[35] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated February 3, 2021 and the assailed Resolution dated July 16, 2021 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[35] G. R. No. 188016, January 14, 2015, citing *Sea-Land Service, Inc. vs. Court of Appeals*, G.R. No. 122605, April 30, 2001.

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 Section 13 of Article VIII 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