REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS, *Petitioners,*	CTA EB No. 1566 (CTA CASE No. 8886)
-versus-	*Present*: DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
JADE BROS FARM AND LIVESTOCK, INC., *Respondent.*	Promulgated: JUL 04 2018 3:35 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as*

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[1] SEC. 4. *Where to appeal; mode of appeal.* –

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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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amended, of the Resolutions dated September 21, 2016[2] and November 25, 2016,[3] rendered by the Third Division of this Court, the dispositive portions of which read as follows:

Resolution dated September 21, 2016:

"**WHEREFORE,** the instant Petition for Review is **GRANTED**. The Court hereby declares petitioner's rice shipments, covered by Bills of Lading Nos. APLU690066069, APLU690195629, SITGBKMS013481A and SITGBKMS013481B, as having been legally imported in the Philippines. Considering that petitioner's rice shipments have already been auctioned, respondents are hereby **ORDERED TO RELEASE** to petitioner, the proceeds of the auction sale held last October 17, 2014, which are presently held in trust by respondents, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importations.

SO ORDERED."

Resolution dated November 25, 2016:

"**WHEREFORE**, petitioner's Motion to Expunge is hereby **GRANTED;** and respondent's Motion for Reconsideration **DENIED**, for lack of merit and failure to comply with *Section 4 of Rule 15 of the Rules of Court.*

SO ORDERED."

The facts of the case, as recited by the Third Division in its September 21, 2016 Resolution, read as follows:

"Petitioner Jade Bros Farm and Livestock, Inc. is engaged in the business of trading and importing all

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[2] Penned by Associate Justice Lovell R. Bautista concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 69-105.
[3] *Ibid.*, pp. 107-111.

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kinds of agricultural, livestock and fishery products and their by-products in the Philippines and abroad.

Respondent BOC is an attached agency of the Department of Finance; and respondent Commissioner of Customs ("COC") is its incumbent Commissioner.

On November 3, 2013 and November 7, 2013, petitioner imported rice without import permits from the National Food Authority ("NFA") with a combined total number of 70x20 containers and an aggregate dutiable value of Php24,961,500.00 xxx

Absent the required import permits from the NFA, upon their arrival at the Manila International Container Port ("MICP"), BOC refused to release the rice shipments to petitioner. After their seizure, petitioner's rice shipments were subjected to forfeiture proceedings xxx.

On February 13, 2014, petitioner filed a Petition for Declaratory Relief and Permanent Injunction covering the foregoing BOLs, with a prayer for the issuance of a Temporary Restraining Order ("TRO") and/ or Writ of Preliminary Injunction ("WPI") docketed as Special Civil Action No. 14131418 and raffled to Regional Trial Court ("RTC") Manila, Branch 41 entitled *"Jade Bros Farm and Livestock, Inc. v. National Food Authority, Hon. Orlan A. Calayag, in his capacity as the Administrator of the National Food Authority, NFA Council, Hon. Proceso J. Alcala, in his capacity as Chairman of the NFA Council, Bureau of Customs, Hon. John Phillip Sevilla, in his capacity as the Commissioner of Customs, and District Collectors, in their respective capacities as the District Collectors for the Ports of Manila, South Harbor, North Harbor and Manila International Container Port, Respondents."*

While the case before the RTC was pending, petitioner wrote letters addressed to Acting District COC of MICP, Gen. Elmer S. Dela Cruz (Ret.) dated June 2, 2014, July 11, 2014 and August 22, 2014.

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In its first letter dated June 2, 2014, petitioner requested the release of the seized rice shipments after payment of the proper duties or taxes; or alternatively, for the issuance of Warrants of Seizure and Detention ("WSD") for the said rice shipments and their release under cash bond pursuant to Section 2301 of the TCCP. Attached thereto is a Memorandum of Authorities asking for the following: (1) the lifting of the alert orders against its rice shipments; (2) in the alternative, the issuance of WSDs for the rice shipments and for their release under cash bond; (3) in case the release under cash bond is unacceptable, for the conduct of a public sale of the rice shipments, with the proceeds to be held in trust pending the final outcome of the seizure proceedings.

On July 21, 2014, the BOC issued WSDs xxx

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Pursuant to the provisions of Section 2607 in relation to Section 2601 of the TCCP, Customs Memorandum Order ('CMO") No. 42-93 dated August 27, 1993, and CMO No. 10-2007 dated November 28, 2007,whereby the BOC is directed to dispose of all fresh, frozen, chilled and/ or canned foodstuffs, within ten (10) days after issuance of the WSD, BOC issued a Notice of Public Auction xxx.

Reacting to this Notice of Public Auction, petitioner sent a third letter dated August 22, 2014 to the District Collector of the MICP, objecting to the public auction of its rice shipments, and arguing, among others, its prematurity in view of the pendency of petitioner's Consolidated Motion for Release Under Cash Bond xxx alleging that no formal notice was sent to petitioner or its counsel anent the public auction, offering to settle the case by payment of a fine and/ or redemption value as determined by the BOC, and demanding that petitioner be automatically allowed to participate as one of the bidders in the scheduled public auction. As a result, on August 27, 2014, the BOC cancelled the scheduled public auction.

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With its requests left unheeded by the District Collector of the MICP, petitioner filed a Consolidated Motion for Release Under Cash Bond for SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014, reiterating its request for the release of the rice shipments, upon posting of a cash bond. Thereafter, respondents commenced procedures for the public auction of petitioner's imported rice.

Pending the above Consolidated Motion for Release, with no action being taken by the BOC and on September 3, 2014, petitioner filed the present Petition for Review with the following pleas: (1) upon filing the Petition for Review, for the issuance of an Ex Parte TRO /WPI;(2) pending trial on the merits, for the release of the rice shipments upon posting a bond; (3) after trial on the merits and hearing, for judgment to be rendered making the WPI permanent, declaring the importations as legal, and ordering the return of any bond posted or paid, or the release of any rice shipments still in the custody of respondents.

Pursuant to the provisions of Section 2607 in relation to Section 2601 of the TCCP and CMO No. 42-93 dated August 27, 1993 and CMO No. 10-2007 dated November 28, 2007, BOC issued a Notice of Public Auction xxx.

The Court heard petitioner's application for a TRO on September 10, 2014. On September 11, 2014, the Court granted petitioner's first prayer in the Petition for Review (1) ordering respondents to cease and desist from conducting the public auction on September 11, 2014, and (2) issuing a TRO effective for twenty (20) days from service on the person/s to be enjoined. Hence, the public bidding did not push through.

Likewise on September 10, 2014, the RTC of Manila issued an Order and noted the Manifestation and Motion filed by petitioner in that case, which seeks to withdraw its prayer for injunctive reliefs (TRO and WPI). Hence, the RTC of Manila considered the said injunctive reliefs withdrawn.

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Upon expiration of the twenty (20)-day TRO with no WPI issued by the Court, another Notice of Public Auction was issued, published and posted, which was scheduled to be conducted on October 17, 2014. As compared with the previous scheduled public auctions, this auction pushed through and the winning bidder was awarded the shipments for the amount of Php73,508,689.80, was issued a Notice of Award and Auction Sale, and the proceeds of the sale were held in trust by the BOC.

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In respondents' Answer, the following Special and Affirmative Defenses were interposed, in sum: (1) that the petition should be dismissed as it has been rendered moot and academic by the auction of petitioner's shipments on October 17, 2014; and as petitioner committed forum shopping; (2) that petitioner illegally imported rice;(3) that petitioner has no personality to file a petition before the Court questioning the Government's alleged violation of the World Trade Organization ("WTO") Agreement; (4) that regardless of the status of the Quantitative Restrictions ("QR"), the NFA continues to have sole authority to import rice in the Philippines and to authorize private entities to import rice; (5) that NFA Memorandum Circular No. A0-2K13-03-003 ("NFA Memorandum Circular") is presumed valid, hence, compliance therewith is mandatory; (6) that the non-submission of the subject NFA Memorandum Circular to the UP Law Center does not render the same invalid; (7) that the Philippines' request for waiver has been approved; and (8) that respondents are not obliged to receive petitioner's bond in exchange for the release of the seized goods.

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On November 27, 2015, petitioner filed its Motion for Summary Judgment, which was initially denied by the Court in its February 10, 2016 Resolution.

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Petitioner, then, filed a Motion for Reconsideration (Re: Resolution dated 10 February 2016) on March 1, 2016 by registered mail, which relates to the denial of the Court of its Motion for Summary Judgment. On June 6, 2016, the Court issued a Resolution reversing its previous Resolution, finding no genuine issue of fact in the case and submitting the case for summary judgment. The parties were directed to submit their respective supporting affidavits within thirty (30) days from receipt thereof; and within fifteen (15) days from receipt of the supporting affidavits or the lapse of the thirty (30) day period, to simultaneously file their opposing affidavits and respective memoranda, if desired. Thereafter, the case will be submitted for resolution.

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In its Memorandum, petitioner avers that its importation of rice is legal, in view of the expiration of the Special Treatment accorded to the Philippines under the WTO- General Agreement on Tariffs and Trade Agreement ("WTO Agreement"), thus, the seizure and forfeiture of the same are illegal; that the refusal of respondents to release the rice shipments and the subsequent sale at a public auction were illegal, contrary to law, and respondents' own regulations; and that petitioner did not engage in forum shopping. On August 30, 2016, respondents filed a Manifestation stating that they stand firm that the law creating the Court of Tax Appeals ("CTA") does not provide it with jurisdiction to decide on the issue of expiration of the Special Treatment on rice under the WTO Agreement on Agriculture, not to mention that the same issue is already pending with the RTC of Manila; that they find no reason to file any opposing affidavit since petitioner's Memorandum only opposed the JA of DOA Undersecretary Serrano which dealt with the issue of Special Treatment on rice; that the said JA was submitted only for a better appreciation by the Court of the issues and to show that petitioner's evidence is not uncontested, without

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waiving their argument that petitioner committed forum shopping; and that respondents adopt as their Memorandum their Answer to the Petition for Review.

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The Third Division ruled that although there is no formal decision of the COC that is appealable before this Court, considering the action of the COC with respect to the rice shipments, the Third Division implied it as an estoppel on the COC's part, justifying the appeal of Jade Bros Farm and Livestock, Inc. (JBFLI) before the Court without waiting for the COC's decision. The Third Division moreover ruled that it is not only as to the decisions of the COC that the Court may acquire jurisdiction over the case, but also as to "other matters arising under the Customs Law or other laws administered by the [BOC]."

The Third Division also ruled that there was no forum shopping committed by JBFLI. The Court ratiocinated that the case pending before the RTC-Manila is a complaint for Declaratory Relief while the case before this Court is a Petition for Review, having different causes of action. Consequently, a final judgment in one case cannot amount to *res judicata* in another.

On the TRO sought by JBFLI, first before the RTC-Manila, and thereafter, before this Court, the Third Division ruled that a mere comparison of the wordings between two initiatory pleadings is insufficient to make determination of the existence of forum shopping. The Third Division emphasized that the TRO that JBFLI sought in the case filed before this Court was to enjoin the public auction of its rice shipments, and this is not the case before the RTC-Manila as the rice shipments have not yet been set for auction when the Declaratory Relief was filed. The Third Division also took note that JBFLI withdrew its prayer for injunctive reliefs, which the RTC- Manila granted.

Lastly, the Third Division ruled that the importation made by JBFLI was not illegal.

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Petitioners herein filed their Motion for Reconsideration,[4] stating therein that the Court has no jurisdiction over the Petition for Review; that JBFLI committed forum shopping; that the Court decided an issue that was earlier submitted for adjudication by RTC-Manila; and that the Court misapplied the law.

In JBFLI's Motion to Expunge and *Ex Abundante Ad Cautelam Comment* (Re: Motion for Reconsideration dated 12 October 2016),[5] it counters that the Motion for Reconsideration was set for hearing on October 21, 2016 or four (4) days prior to its receipt of the same; that Section 4 of Rule 15 of the Rules of Court requires every written motion to be heard and the notice of hearing thereof to be served to the other party at least three (3) days prior to hearing; and that in view thereof, the Motion for Reconsideration is fatally flawed, is deemed a mere scrap of paper, and did not suspend the running of the period of appeal.

JBFLI alleges that the Court was correct in ruling that it has jurisdiction over the case; that the filing of the Petition for Review does not constitute forum shopping; and that the Court is correct in its interpretation and application of the law.

The Third Division, ruling that non-compliance with Section 4 of Rule 15 of the Rules of Court is a fatal defect, that a motion which fails to comply with said Rule is a mere scrap of paper, that it is not entitled to judicial cognizance, and it does not suspend the running of the period to appeal, denied the Motion for Reconsideration filed by the BOC and COC and granted JBFLI's motion to expunge. Thus, the instant Petition for Review was filed.

In their Petition for Review,[6] the BOC and COC emphasize that JBFLI's Motion to Expunge was never calendared for hearing by the Court nor required them to comment thereon. Moreover, petitioners assert absence of

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[4] *En Banc Dockets,* Vol. I, pp. 112-145.
[5] *Division Dockets,* Vol. 8, pp. 3737-3790.
[6] *En Banc Dockets,* Vol. I, pp. 8-66.

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jurisdiction on the part of the Court's Third Division due to its admission that there was no formal decision on the part of the COC that is appealable before this Court. As argued by petitioners, the action for auction made by them cannot be considered as their decision but as a mandate from Customs Memorandum Orders directing them to dispose perishable goods. The petitioners also insist presence of forum shopping and authority of the NFA to require import permits before shipment of rice.

On the other hand, JBFLI, in its Comment,[7] emphasizes that since petitioners' motion for reconsideration was already stricken off the records, then the Resolution dated September 21 2016 had already attained finality. It also upholds compliance to the WTO agreement, where QRs are prohibited at the time of the shipment of rice. It also insists that the actions taken by petitioners over the rice shipments partake the nature of a final decision of the COC, wherein this Court has jurisdiction over the subject matter. Lastly, it maintains its position that there was no forum shopping. On June 28, 2017, JBFLI filed its Memorandum,[8] reiterating therein all the arguments raised in its Comment.

This Court rules.

JBFLI filed a Motion to Expunge and *Ex Abundante Ad Cautelam* Comment (Re: Motion for Reconsideration dated 12 October 2016), claiming that it received a copy of petitioners' motion for reconsideration only on October 25, 2016, or four days after the date it was set for hearing, which allegedly constitutes a violation of Section 4, Rule 15 of the Rules of Court, which states:

> "Section 4. Hearing of motion. Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

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[7] *En Banc Dockets,* Vol. I, pp. 500-530.
[8] *En Banc Dockets,* Vol. II, pp. 546-569.

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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice."

In the case of *Danilo Galang et. al., vs. the Bureau of Customs and the Commissioner of Customs (the "Galang Case"),*[9] *a* Motion to Strike Respondents' Motion for Partial Reconsideration was filed by petitioners therein, in alleged violation of Section 4 Rule 15 of the Rules of Court. An Opposition was filed, stating therein that petitioners were not deprived of answering respondents' Motion for Partial Reconsideration.

In the Supreme Court case of *Cabrera vs. Ng (the "Cabrera Case"),*[10] non-compliance with the three-day rule in motions admits of exception, thus:

> "A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon."[11] "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."[12]
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> Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with. Thus, in *Preysler, Jr. v. Manila Southcoast Development Corporation,*[13] the Court ruled that:

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[9] CTA Case No. 8885, April 1, 2016.
[10] G.R. No. 201601, March 12, 2014.
[11] *Ibid.,* citing *Pallada vs. RTC of Kalibo, Aklan, Br. 1,* 364 Phil. 81, 89 (1999).
[12] *Ibid.,* citing *Nuñez vs. GSIS Family Bank,* 511 Phil. 735, 747-748 (2005).
[13] G.R. No. 171872, June 28, 2010, 621 SCRA 636.

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> The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.[14] xxx." (Underlining Supplied.)

Applying then the above-mentioned cases, it must be emphasized that on October 19, 2016, or a day before the date set for hearing in petitioners' Motion for Reconsideration, JBFLI was instead ordered to comment thereto.[15] JBFLI filed its *Motion to Expunge and Ex Abundante Ad Cautelam* on December 18, 2014. The Court's First Division in *Galang* ruled in this manner, citing the case of *Cabrera:*

> "Hence, upon receipt of the Motion for Partial Reconsideration by petitioners, and upon receiving the directive of this Court to file comment to the said motion, petitioners were fully aware that the said Motion was not heard on the date intended. When petitioners received the Resolution ordering them to file comment to the said Motion, they were able to file opposition thereto. Thus, notwithstanding that petitioners received a copy of the said Motion for Partial Reconsideration only five (5) days after the date set by respondents for the hearing thereof, petitioners' right to due process was not violated as they were afforded the chance to argue their position." (Underlining supplied.)

Thus, when JBFLI received the order to comment, they had the opportunity to oppose thereto and its right to due process was not violated as they were afforded the chance to argue their position.

On the other hand, JBFLI's motion to expunge was neither set for hearing nor the petitioners ordered to

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[14] *E&L Mercantile, Inc. vs. Intermediate Appellate Court*, 226 Phil. 299 (1986).
[15] *Division Dockets,* Vol. 8, p. 3736.

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comment thereto. Applying Section 4 Rule 15 of the Revised Rules of Court, every written motion shall be set for hearing except for motions which the court may act upon without prejudicing the rights of the adverse party. Obviously, acting upon the motion to expunge without petitioners asking to comment thereto is prejudicial and, which in this case, actually lead to the dismissal of their Motion for Reconsideration without giving them opportunity to argue their position.

On the issue of jurisdiction, the ruling in *Galang* is on all fours. The Third Division, in ruling that it has jurisdiction over the case, cited the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue,*[16] making this instant case an exception to the rule on exhaustion of administrative remedies. However, as stated in the April 29, 2015 Resolution in *Galang:*

> "It must be borne in mind that the Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Pursuant to Section 7 (a) (4) of **Republic Act No. 9282**, amending **Republic Act No. 1125**, this Court has jurisdiction over decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.
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> Corollary thereto, Section 3 of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically includes the decision of the Commissioner of Customs as one of the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:
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> > "SEC. 3. Cases within the jurisdiction of the Court in Divisions. - The Court in Division shall exercise: (a) Exclusive

[16] G.R. No. 175097, February 5, 2010.

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original over or appellate jurisdiction to review by appeal the following:

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(4) **Decisions of the Commissioner of Customs** in cases involving liability for custom duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs; [Emphasis supplied.]

In ***Ace Publications, Inc. v. The Commissioner of Customs, et al,***[17] the Supreme Court emphasized that the filing of the petition for review before the Court of Tax Appeals is premature in the absence of a final decision of the Commissioner of Customs. xxx

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The same principle was echoed in a later case of ***Chia v. Acting Collector of Customs, et al.,***[18] wherein the Supreme Court re-emphasized that the taxpayer's failure to exhaust the available administrative remedies renders his judicial appeal dismissible for being prematurely filed. Xxx

It bears stressing that **Section 602(g) of the Tariff and Customs Code of the Philippines** (TCCP) specifically empowers the Bureau of Customs to exercise exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws. Thus, "[u]pon effecting the seizure of the goods, the Bureau of Customs acquired exclusive jurisdiction not

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[17] G.R. No. L-18808, May 29, 1964.
[18] G.R. No. L-43810, September 26, 1989.

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only over the case but also over the goods seized for the purpose of enforcing the tariff and customs laws." Clearly then, "the prevailing doctrine is that the exclusive jurisdiction in seizure and forfeiture cases vested in the Collector of Customs precludes a court of instance [now the Court of Tax Appeals] from assuming cognizance over such a matter. "

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In order to bolster their stance, petitioners cite the case of ***Allied Banking Corporation vs. Commissioner of Internal Revenue*** *(the "Allied Banking Case")* in order to justify their premature recourse to this Court as an exemption to the rule on exhaustion of administrative remedies.

We are not persuaded.

A careful perusal of the Supreme Court's decision in *Allied Banking Case* readily reveals that the same is not on all fours with the instant case. In the said case, while the taxpayer failed to administratively protest the Formal Letter of Demand with Assessment Notices (FLD), the Supreme Court considered the FLD as a final decision of the Commissioner of Revenue (CIR) appealable to the CTA because the words used therein, specifically the words "final decision" and "appeal", taken together led the taxpayer to believe that the FLD was in fact the final decision of the CIR on the letter-protest it filed when it disputed the Preliminary Assessment Notice and that the available remedy was to appeal the same before the CTA. Thus, the Supreme Court held that the circumstance of the case is an exception to the rule on exhaustion of administrative remedies on the ground of estoppel on the part of the administrative agency concerned.

In contrary, this involves seizure and forfeiture proceedings pursuant to the TCCP and not tax deficiency assessment under the National Internal Revenue Code (NIRC). Moreover, nowhere in the instant petition does it appear that the respondent Commissioner issued any final decision or ruling on

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> the seizure and forfeiture proceedings relating to petitioners' seized rice shipments. xxx
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> It can therefore be deduced from the foregoing that there is as yet no decision by the respondent Commissioner on the seizure and forfeiture proceedings over the subject rice shipments. Consequently, as respondents correctly observed, petitioners merely speculate and expect that respondent Commissioner will rule unfavourably against them. Clearly then, the premature filing of the instant petition warrants a dismissal as no jurisdiction is acquired by this Court over the subject matter of the case."

Absent decision from the petitioners, this Court did not acquire jurisdiction over the case. Under the rules of statutory construction, exceptions extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception.[19] Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication.[20]

In view of the foregoing disquisitions, there is no longer a need to still delve into and resolve the other issues raised in the said petition and other pleadings filed by both parties. Yet, for the peace of mind of both, this Court will lastly rule on the issue of forum shopping.

With respect to forum shopping, records disclose that JBFLI instituted a complaint docketed as Special Civil Action No. 14131418[21] before the RTC-Manila, and sought for the following reliefs:

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that:

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[19] *Commissioner of Internal Revenue vs. Court of Appeals, Central Vegetable Manufacturing Co., Inc., and Court of Tax Appeals*, G.R. No. 107135, February 23, 1999, citing the case of *Samson vs. Court of Appeals*, 145 SCRA 659 [1986].
[20] *Ibid.*
[21] *Division Dockets*, Vol. 1, pp. 110-167.

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1. Upon the filing of this Petition, an *ex parte* Temporary Restraining Order (TRO) effective for seventy-two (72) hours be immediately issued against the Respondents to enjoin and restrain them, all those acting for and in their behalf, and all their agents and responsible officers, from:

    a. Requiring the procurement of an Import Permit when importing rice;

    b. Seizing and holding all of Petitioner's incoming rice shipments, including but not limited to those covered by Bills of Lading Nos. APLU 690195629, APLU 690066069, STGBKMS013481A, and SITGBKMS013481B and those shipments which have recently landed, previously landed, those which are expected to arrive, or will arrive after the filing of the instant Petition or during its pendency, in any Philippine port or any port in Metro Manila, including the Ports of Manila, South Harbor, North Harbor, or Manila International Container Port, within the jurisdiction of this Honorable Court;

    c. Implementing any Alert Orders, Hold Orders, and issuances in relation to Petitioner's rice importation or;

    d. Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated below are still at issue and subject to judicial determination;

2. Pending trial on the merits, <u>the Honorable Court issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining Respondents, all those acting for</u>

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and in their behalf, and all their agents and responsible officers from:

a. Implementing NFA Memorandum Circular No. A0-2K13- 003 as well as the NFA Council Resolution No. 670-2013-C;

b. Requiring the procurement of Import Permits when importing rice;

c. Seizing the incoming rice shipments of the Petitioner, including those covered by the above-mentioned Bills of Lading, those which have recently landed, previously landed, those which are expected to arrive or will arrive after the filing of the instant Petition or during its pendency, in any Philippine port, or any port in Metro Manila, including the Ports of Manila, South Humor, North Harbor, or Manna International Container Port, within the jurisdiction of the Honorable Court and/or refusing to release the same on the basis of the lack of an Import Permit through the implementation of any Alert Orders, Hold Orders, and other issuances, and; *(sic)*

d. Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination. *(sic)*

3. After the conduct of necessary proceedings, the Honorable Court issue a Writ of Preliminary Injunction, effective from the date of the filing of the instant Petition up to the finality of the same, enjoining the Respondents, all those acting for and in their behalf and all their agents and responsible officers, from committing the

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above-mentioned acts, after a bond shall have been posted by the Petitioner to answer for whatever damages that the Respondents may suffer by virtue of its issuance over and above all claims and counterclaims;

4. After trial on the merits and hearing, the Honorable Court make such Writ of Injunction permanent and declare NFA Memorandum Circular No. AO-2K13-03-003, as well as the NFA Council Resolution No. 670-2013-C as irregular and/or illegal, that the Respondents have no legal authority and power to require the procurement of Import Permits when importing rice, and conversely, that the Petitioner has the legal right to import rice without the need to procure Import Permits, and;

5. After trial on the merits and hearing, the Honorable Court render a Decision perpetually enjoining Respondents, all those acting for and in their behalf and all their agents and responsible officers, from committing the above-mentioned acts.

Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for." (Underlining supplied.)

On the other hand, the reliefs prayed for in the Petition for Review filed before this Court are the following:

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that:

1. Upon the filing of this Complaint, an *ex parte* Temporary Restraining Order (TRO)/writ of preliminary injunction be immediately issued against the Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from conducting any public auction concerning the rice shipments subject herein, scheduled on 11

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September 2014 with the MICP, and from doing similar acts or otherwise conducting any similar sale or disposition of Petitioner's rice shipments, While the propriety and validity of its actions are still at issue and subject to judicial determination;

2. Pending trial on the merits, the Honorable Court issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining respondent Commissioner of the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions from:

    a. Proceeding with the public auction scheduled on 11 September 2014 or any time thereafter,

    b. Selling or otherwise disposing the subject property either through sale, public auction, donation, or any alternative mode of disposition, on 11 September 2014 or any time thereafter, and

    c. From doing any similar acts that would dispose Petitioner's rice shipments or otherwise deprive him thereof, of while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination; and

3. Pending trial on the merits, the Honorable Court issue an order releasing the subject rice shipments upon posting of a bond by the Petitioner, in an amount equivalent to

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> the value of the subject rice shipments as assessed and valued by the Bureau of Customs and payment of the 50% out-quota tariff due on the subject rice shipments, including the demurrage and storage charges thereon, and DIRECTING the Bureau of Customs, Respondent Commissioner of Customs, and all those acting in their behalf, to ACCEPT and PROCESS the payments, and to immediate *(sic)* release all the rice shipments, which are highly perishable goods.
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> 4. <u>After trial on the merits and hearing, judgment be rendered making said Preliminary Injunction permanent, declaring the importation of Petitioner's rice shipments as legal</u>, and ordering the return of any bond posted or paid by the Petitioner in relation to the instant proceedings, <u>or ordering the release of any rice shipments</u> being still in the custody of the Respondents.
>
> Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for." (Underlining supplied.)

Undeniably, JBFLI is guilty of forum-shopping when it filed its Petition for Review with this Court insofar as they undertook to obtain similar reliefs based on similar facts, as those stated and sought for before the RTC-Manila.

A comparison of the reliefs sought by JBFLI in the Petition for Review before this Court and the RTC-Manila confirms that they are substantially similar on every point, *i.e.*, the issuance of a TRO and thereafter of a Preliminary Injunction from conducting any action in relation to the rice shipments, and perpetually or permanently enjoining thereafter petitioners from committing actions prejudicial to JBFLI with respect to the rice shipments upon declaration that the shipments are indeed legal.[22]

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[22] *Galang, supra* note 9.

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There can be no dispute that the prayers for relief in the two cases were based on the same attendant facts. Both cases are founded on one statement of assertion that JBFLI has rice shipments subject to seizure and public auction by the BOC due to illegal importation.

These similarities undoubtedly create the possibility of conflicting decisions from different courts.[23] These two actions boil down to a single issue, although the issues and reliefs prayed for may be stated differently, because the final disposition of one would constitute *res judicata* in the other.[24]

The identity of parties is also evident as the parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.[25]

As to identity of causes of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. As stated by the Supreme Court:

> "This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action."[26]

Both cases question the validity of JBFLI's importation of rice and it follows that all pieces of evidence, *i.e.*, that the rice shipments were imported legally since NFA

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[23] *Sps. Arevalo vs. Planters Development Bank*, G.R. No. 193415, April 18, 2012.
[24] *Galang, supra* note 9.
[25] *Goodland Company, Inc. vs. Asia United Bank et al.*, G.R. No. 195546 and G.R. No. 195561, March 14, 2012.
[26] *Ibid.*, citing *Villanueva vs. Court of Appeals*, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 714, citing *Government Service Insurance System (GSIS) vs. Group Management Corporation (GMC)*, G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 279, 313.

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Memorandum Circular AO-2K13-03-003 is invalid, will support or establish JBFLI's causes of action in both cases.[27]

The cause of action in the complaint filed before the RTC-Manila is the alleged nullity of NFA Memorandum Circular AO-2K13-03-003 which is allegedly violative of JBFLI's right to import rice shipments.[28] It serves as the basis for the prayer for the TRO and Preliminary Injunction. The Petition for Review filed before this Court involves the same cause of action, inasmuch as it also invokes the nullity of the same NFA Memorandum Circular as the basis for the prayer for the TRO and Preliminary Injunction.[29] Obviously, the cause of action which serves as the basis for the reliefs in both cases remains the same, that is, the alleged nullity of NFA Memorandum Circular AO-2K13-03-003. [30]

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of NFA Memorandum Circular AO-2K13-03-003 or should alter the designation or form of the action.[31] The well-entrenched rule is that a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.[32]

Thus, in the case of *Yap vs. Court of Appeals et al.*,[33] the Supreme Court ruled that:

> "Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is

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[27] *Galang, supra* note 9.
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*
[32] *Goodland Company, Inc., supra* note 25, citing *Asia United Bank vs. Goodland Company, Inc.,* G.R. No. 191388, March 9, 2011, 645 SCRA 205, 216-217.
[33] G.R. No. 186730, June 13, 2012.

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> an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint."[34]

What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.[35]

As stated in the case of *Sps. Arevalo vs. Planters Development Bank:*[36]

> "We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions.[37] To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the

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[34] Citing *Subic Telecommunications Company, Inc. vs. Subic Bay Metropolitan Authority,* G.R. No. 185159, October 12, 2009, 603 SCRA 470, 482 and *Umale vs. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 162.

[35] *Sps. Arevalo vs. Planters Development Bank*, G.R. No. 193415, April 18, 2012, citing Lim v. Vianzon, 529 Phil. 472 (2006).

[36] *Ibid.*

[37] Citing *Guevara vs. BPI Securities Corporation*, G.R. No. 159786, 15 August 2006, 498 SCRA 613.

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dismissal of a case.[38] The acts committed and described herein can possibly constitute direct contempt."[39]

Indeed, JBFLI committed forum-shopping by going to different courts to avail itself of multiple judicial remedies founded on similar facts and raising substantially similar reliefs.[40]

It may have been argued that JBFLI did not commit forum shopping when it disclosed in the Verification and Certification against Forum Shopping appended in the Petition for Review the filing of Petition for Declaratory Relief before the RTC-Manila. Thus:

> "On 13 February 2014, I, in behalf of Jade Bros Farm and Livestock Inc., filed a Petition for Declaratory Relief and Permanent Injunction With Prayer for a Temporary Restraining Order and/or Preliminary Injunction entitled "JADE BROS FARM AND LIVESTOCK, INC. vs. NATIONAL FOOD AUTHORITY,

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[38] Citing *Dy vs. Mandy Commodities Co., Inc.,* G.R. No. 171842, 22 July 2009, 593 SCRA 440.

[39] Rules of Court, Rule 7:

> SEC. 5. *Certification against forum shopping.* The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) <u>that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein</u>; (b) <u>if there is such other pending action or claim, a complete statement of the present status thereof</u>; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. <u>The submission, of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions</u>. (Underlining supplied.)

[40] *Galang, supra* note 9.

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> HONORABLE ORLAN A. CALAYAG, in his capacity as the Administrator of the National Food Authority, NFA COUNCIL, HON. PROCESO J. ALCALA, in his capacity as Chairman of the NFA Council, BUREAU OF CUSTOMS, HON. JOHN PHILLIP SEVILLA, in his capacity as the Commissioner of Customs, and DISTRICT COLLECTORS, in their respective capacities as the District Collectors for the Ports of Manila, South Harbor, North Harbor and Manila International Container Port, and OFFICE OF THE SOLICITOR GENERAL" docketed as Special Civil Action No. 14131418 and pending before Branch 41 of the Regional Trial Court of Manila. The said action, however, is one seeking the nullity of NFA Memorandum Circular No. AO-2K13-03-003 and is entirely different and distinct from the present case.
>
> On the other hand, the present case is seeking the Review of the Actions done by Respondent Bureau of Customs in the Seizure Proceedings instituted by the said respondent and pending therein involving Petitioner's rice shipments via Petition for Review under Republic Act No. 9282, otherwise known as An Act Expanding the Jurisdiction of the Court of Tax Appeals."

As ruled in *Galang,* the ruling of the Supreme Court in the case of *Goodland Company Inc. vs. Asia United Bank et al.*[41] is in order, thus:

> "We find that the above certification still fell short of the requirement of the rule on forum shopping. While petitioner disclosed the pendency of Civil Case No. 03-045 it filed earlier, it qualified the nature of the said case by lumping it together with other pending related cases. <u>Petitioners simultaneous attestation that it has not commenced any other action or filed any claim, involving the same issues in any court implies that the pending related cases mentioned therein do not involve the same issues as those raised by it in the subsequently filed Civil Case No. 06-1032</u>. <u>Consequently, petitioner has filed a certificate that is partly false and misleading because Civil Case No. 06-1032 squarely raised the issue of the nullity of the REM,</u>

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[41] *Supra* note 25.

which was in fact the principal issue in Civil Case No. 03-045." (Underlining supplied.)

Applying the ratio of the Supreme Court, the fact that JBFLI consistently insisted in its statement in the Certificate against Forum Shopping that the Petition for Review filed before this Court involves an entirely different and distinct issues and causes of action from the other related cases mentioned therein obviously results in the filing of a false and misleading Certificate of Non-Forum Shopping.[42]

As far as the withdrawal of JBFLI's prayer for injunctive reliefs before the RTC-Manila is concerned, such is a mere afterthought and done after the filing of the Petition for Review before this Court.

However, Section 2 of Republic Act No. 1125,[43] as amended by Republic Act No. 9503, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.* –
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> xxx xxx xxx
>
> The affirmative votes of five (5) members of the Court en banc shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level. (Underlining Supplied.)

Likewise, Section 3, Rule 2 of the RRCTA states that the presence at the deliberation and the affirmative votes of at least five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division. Where the necessary majority vote cannot be had in appealed cases,

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[42] *Galang, supra* note 9.
[43] An Act Creating the Court of Tax Appeals.

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the judgment or order appealed from shall stand affirmed, thus:

> "*Sec. 3. Court en banc; quorum and voting.* – The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc.* The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division xxx Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied." (Underlining supplied.)

In the deliberation of the instant case, only Presiding Justice Roman G. del Rosario, Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Catherine T. Manahan concurred with the opinion of the *ponente* that the assailed Resolutions of the Court in Division should be reversed and set aside.

On the other hand, Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban voted to affirm the assailed Resolutions of the Court in Division.

Associate Justice Caesar A. Casanova inhibited from the instant case.

WHEREFORE, considering that the required affirmative votes of five (5) members of the Court *en banc* was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals, the Petition for Review filed by the Bureau of Customs and the Commissioner of Internal

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Revenue is hereby **DISMISSED.** The Assailed Resolutions are hereby **AFFIRMED.**

Accordingly, the Court hereby declares the rice shipments of Jade Bros. Farm and Livestock, Inc. covered by Bills of Lading Nos. APLU690066069, APLU690195629, SITGBKMS013481A and SITGBKMS013481B, as having been legally imported in the Philippines. Considering that the rice shipments have already been auctioned, the Bureau of Customs and the Commissioner of Customs are hereby **ORDERED TO RELEASE** to Jade Bros. Farm and Livestock, Inc. the proceeds of the auction sale held last October 17, 2014, which are presently held in trust by the Bureau of Customs and the Commissioner of Customs, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importations.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

The petition should be GRANTED!

(I join Justice Manahan's Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Inhibited)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(with Separate Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS, *Petitioners,*	**CTA EB NO. 1566** (CTA CASE NO. 8886)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
JADE BROS FARM AND LIVESTOCK, INC., *Respondent.*	Promulgated: JUL 04 2018 3:35 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla. I wish to stress and expound with particularity the application of *Danilo Galang et al. vs. the Bureau of Customs and the Commissioner of Customs* (*Galang Case*)[1] cited by my esteemed colleague to the present controversy.

In the assailed Resolution, the Court in Division concluded that there was no forum-shopping. The assailed Resolution ratiocinated by noting that **Civil Case No. 14-131418** pending before the Regional Trial Court (RTC) of Manila was for Declaratory Relief and Permanent Injunction while **CTA Case No. 8886** pending with the Court of Tax

[1] CTA Case No. 8885, April 1, 2016.

Appeals (CTA) was a Petition for Review filed pursuant to Section 7(a)(4) of Republic Act (RA) No. 1125. Allegedly, the two causes of action are different such that a final judgment in one case cannot, amount to *res judicata* in another.

The Court *En Banc ponencia*, on the other hand, opined that the reliefs prayed for in **Civil Case No. 14-131418** and **CTA Case No. 8886** are the same as the subject matter in **both** cases refer to the same rice shipments. Specifically, petitioner in both cases (respondent herein) pleaded for the issuance of an injunctive writ to enjoin and restrain respondents therein (petitioners herein) from conducting any action in relation to the rice shipments.

While the *ponencia* cites the *Galang Case* in resolving the issue of jurisdiction, the discussion in said case on the issue of forum-shopping is *apropos.*

In the *Galang Case*, petitioner Danilo G. Galang instituted a complaint docketed as Civil Case No. CV-14-131261 before the RTC-Manila, and sought for an injunctive writ to enjoin and restrain respondents therein from conducting any action in relation to its rice shipments. The Orders of the RTC-Manila granting petitioner Galang's complaint were ultimately appealed before the Supreme Court *En Banc* by the BOC through a Petition for Certiorari docketed as G.R. No. 211375. Pending resolution of the BOC's Petition for Certiorari, the Supreme Court, in a Resolution dated March 18, 2014, enjoined the: (i) court *a quo* from implementing its assailed Orders; and, (ii) respondents Galang (and respondent Ivy M. Souza) from undertaking any and all action with respect to the subject rice shipments and any rice shipments similarly situated as those in the case *a quo* which they may acquire by sale or by importation after the filing of the case *a quo*. Notwithstanding the Supreme Court's Order, petitioners therein filed a Petition for Review before the CTA praying for the issuance of an *ex parte* Temporary Restraining Order and/or writ of preliminary injunction against the Bureau of Customs and the Commissioner of Customs.

The Court in Division ultimately dismissed the Petition for Review filed by petitioners Galang and Souza, after finding that petitioners deliberately filed in multiple fora separate cases invoking similar causes of action manifestly intended to acquire a favorable judgment. The Court in Division also required petitioners to SHOW why they should not be held liable for direct contempt of court for availing of multiple judicial remedies founded on similar facts and raising substantially similar reliefs from different courts. Petitioners then elevated the denial of their Petition for Review before the Court *En Banc*[2]. In a Decision dated December 19, 2017,[3] the Court *En Banc* **affirmed the Court in Division's Resolution, after declaring that petitioners Galang and Souza committed forum-shopping.**

In the case at bar, considering the finding of the Court *En Banc* that petitioner is guilty of forum shopping when it filed its Petition for Review with the CTA which prayed for similar reliefs based on similar facts as those stated and sought for before the RTC of Manila, I submit that petitioner and its counsel should likewise be ordered to SHOW CAUSE why they should not be held liable for direct contempt of court for availing of multiple judicial remedies founded on similar facts and raising substantially similar reliefs from different courts. Under Revised Circular No. 28-91 *(Additional Requisites For Petitions Filed With The Supreme Court And The Court Of Appeals To Prevent Forum Shopping Or Appeals To Prevent Forum Shopping Or Multiple Filing Of Petitions And Complaints)* dated February 8, 1994, any willful and deliberate forum shopping by any party and his counsel through the filing of multiple petitions or complaints to ensure favorable action shall constitute direct contempt of court.

All told, I **VOTE** to: (i) **GRANT** the Petition for Review; (ii) **REVERSE** and **SET ASIDE** the assailed Resolutions of the Court in Division; (iii) **DISMISS** the Petition for Review filed by Jade Bros Farm and Livestock, Inc. docketed as CTA Case No. 8886 for lack of jurisdiction; and, (iv) **ORDER** respondent Jade Bros Farm and Livestock, Inc. and its counsel to **SHOW CAUSE** why they should not be liable for direct contempt of court for availing of multiple judicial remedies founded on similar facts and raising substantially similar reliefs from different courts.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Danilo G. Galang, doing business under the name and style of St. Hildegard Grains Enterprises, and Ivy P. Souza, doing business under the name and style of Bold Bidder Marketing and General Merchandise vs. The Bureau of Customs and the Commissioner of Customs,* CTA EB No. 1451.

[3] Penned by Associate Justice Lovell R. Bautista; concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; Associate Justice Juanito C. Castaneda, Jr. was on leave.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS, *Petitioners,*	**CTA *EB* No. 1566** (CTA Case No. 8886)
	Present: **DEL ROSARIO,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
-versus-	
JADE BROS FARM AND LIVESTOCK, INC., *Respondent.*	Promulgated: JUL 04 2018 3:35 p.m.

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CONCURRING OPINION

BAUTISTA, J.:

With due reverence to the *ponente*, while I agree with the dispositive portion of the Decision, I wish to highlight the reasons why respondent is not guilty of forum shopping.

In their Answer filed before the Court in Division, petitioners cited the case of *Heirs of Marcelo Sotto v. Palicte*[1] and the following test:

> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and

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[1] G.R. No. 159691, February 17, 2014, 716 SCRA 175.

> circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.
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> xxx xxx xxx
>
> The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to res judicata in the action under consideration.

From these tests, the Court in Division added a test borrowed from the case of *Polanco v. Cruz*[2]:

> There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari.*

At the heart of forum shopping lies the concept of *res judicata,* such that the subsequent case filed will be a bar to the previous case filed, if they are tried at the same time but before different courts. This concept was explained in the Supreme Court case of *Degayo v. Magbanua-Dinglasan, et. al., G.R. No. 173148, April 6, 2015* in the following manner:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former

[2] G.R. No. 182426, February 13, 2009, 579 SCRA 489.

> suit." It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

I do not find *res judicata* obtaining here.

To begin with, the action that is pending before the Regional Trial Court ("RTC") of Manila is a complaint for Declaratory Relief. On the other hand, before the Court *a quo* is a Petition for Review pursuant to *Section 7(a)(4) of RA No. 1125*. The two causes of action are different *in se*, such that a final judgment in one case cannot amount to *res judicata* in another.

Moreover, under its mandate, only the Court of Tax Appeals has exclusive and appellate jurisdiction to rule on the Petition for Review filed by petitioner. Therefore, the reliefs prayed for in this Petition cannot be the same ones that are the subject of the complaint for Declaratory Relief pending before the RTC of Manila.

Finally, the rule on forum shopping does not apply to cases that have been elevated by way of appeal or *certiorari* to higher or appellate courts or authorities.[3] This is so because an appealed case is merely a continuation of the original case, and treated as only one case.

It is undeniable that by the nature of this case, which is an appeal from the decision of the Commissioner of Customs ("COC") in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs ("BOC"), forum shopping is not present.

This case is, by law, a continuation of SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014, which were initiated by petitioners themselves, in the first place. It cannot be treated separately from the

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[3] *Guy v. Asia United Bank,* G.R. No. 174874, October 4, 2007, 534 SCRA 703.

seizure and forfeiture cases. Being a court that has exclusive appellate jurisdiction to review by appeal decisions of the COC, and other matters arising under the Customs Law or other laws administered by the BOC,[4] the Court in Division would be rendered powerless to decide the case lest it be one appealed or originating from proceedings before petitioner BOC. There is no dispute that the rice shipments subject of this case are the same rice shipments covered by SIC Nos. 356-2014, 357-2014, 358-2014 and 359-2014.

Therefore, being an appeal from the proceedings which originated from petitioner BOC, the exception provided by the Supreme Court in *Polanco v. Cruz*[5] that "a party seeks a favorable opinion in another forum through means other than appeal" must be applied.

On the Temporary Restraining Order ("TRO") sought by respondent, first before the RTC of Manila, and thereafter, before the Court in Division, again, a mere comparison of the wordings between the two initiatory pleadings is insufficient to make a determination of the existence of forum shopping. This is why the Court in Division had to go back to the tests previously mentioned.

It must be remembered that the TRO that respondent sought in the Court in Division was to enjoin the public auction of its rice shipments on September 11, 2014. If it will be argued that the same injunctive relief was sought before the RTC of Manila when the special civil action for Declaratory Relief was filed, then this argument will sink because the rice shipments have not yet been set for auction at that time. To illustrate, the public auction of the rice shipments was initially set on August 28, 2014. This was rescheduled to September 11, 2014. On the other hand, the Declaratory Relief was filed with the RTC of Manila on February 13, 2014, even before any public auction was scheduled. Thus, following petitioners' reasoning, the act sought to be enjoined by way of injunction when the special civil action for Declaratory Relief was filed on February 13, 2014, was not yet extant. To add to this, the injunction sought before the RTC of

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[4] Sec. 7. *Jurisdiction.* - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided: xxx

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

[5] G.R. No. 182426, February 13, 2009, 579 SCRA 489.

Manila is an ancillary remedy to the principal cause of action sought, which is the special civil action for Declaratory Relief. This only means that the purpose and extent of the injunctive reliefs prayed for in the present case and before the RTC of Manila, cannot be the same. It must likewise be noted that respondent withdrew its prayer for injunctive reliefs, which the RTC of Manila granted.

Then again, on the issue of whether this case will constitute *res judicata* to the case pending before the RTC of Manila, the Court in Division is much aware of the limitations of its jurisdiction, such that it has no power to declare void or unconstitutional a law or regulation of the government, unlike the RTCs which have exclusive authority to hear such class of cases.[6] In a similar vein, the RTCs do not have jurisdiction to review on appeal, decisions of the COC, and other matters arising under the Customs Law or other laws administered by the BOC as these matters are solely vested by law in the CTA. Reflective of these mutually exclusive realms of jurisdiction vested in the CTA and the RTC of Manila, the conclusion that there is no forum shopping in this case is even more indubitable.

Having said the foregoing, it is my humble opinion that no forum shopping exists in this case.

In view of the foregoing discussion, I vote that the present Petition for Review be **DENIED**.

LOVELL R. BAUTISTA
Associate Justice

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[6] Section 1, Rule 63 of the 1997 Rules of Civil Procedure.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS, Petitioner,	**CTA EB NO. 1566** (CTA Case No. 8886)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
JADE BROS FARM AND LIVESTOCK, INC., Respondent.	Promulgated: JUL 04 2018 3:30 p.m.

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SEPARATE OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleague, Associate Justice Mindaro-Grulla, while I concur with the result of the Decision, it is my humble submission that the affirmance of the Assailed Decision and Resolution should be anchored upon different grounds, as stated below.

It is my position that the Third Division correctly ruled that it has jurisdiction over the instant case.

In stating that the Petition for Review with the Court *a* quo should have been dismissed, the *ponente* applied *Danilo G. Galang and Ivy M. Souza v. the Bureau* *of Customs and the Commissioner of Customs*[1] ("*Galang* case") and ruled that absent any final decision or ruling from the Bureau of Customs on the seizure and forfeiture proceedings relating to the seized rice shipments, the Court *a quo* will not acquire jurisdiction.

I respectfully disagree.

I believe that *Galang* is not on all fours with the instant case and should not be applied to the same. *Galang* involved a mere speculation that the Bureau of Customs will rule unfavorably on the motion for release under cash bond. Verily, the record is bereft of any showing that the public auction did take place. In contrast, Petitioners conducted a public auction of Respondent's seized rice shipments in the case at bar.[2] Thus, for all intents and purposes, Petitioners' act manifests clearly its intent not to grant Respondent's prayer for the release of its rice shipments.

Moreover, the complaint filed with the Regional Trial Court ("RTC") in *Galang* is a case for permanent injunction; whereas, in the instant case, the action filed before the RTC of Manila is primarily an action for declaratory relief praying that the National Food Authority ("NFA") Memorandum Circular No. AO-2K13-03-003 be declared as void.

Lastly, a careful perusal of the factual antecedents in *Galang* shows that the Supreme Court specifically enjoined Petitioners therein from undertaking any and all action with respect to the subject rice shipment and any rice shipments similarly situated which they may acquire by sale or by importation after the filing of the case. Yet, Petitioners therein nevertheless violated the Supreme Court's order and filed a Petition for Review with the First Division of this Court.

The use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:[3]

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. **Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as**

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1 CTA Case No. 8885, April 01, 2016. Affirmed by the CTA *En Banc* in a Decision dated December 19, 2017 docketed as CTA EB NO. 1451.

2 Docket, Joint Stipulation of Facts, par. 8, p. 1360.

3 G.R. No. 191475, December 11, 2013.

> **applied to one set of facts might be entirely inappropriate when a factual variant is introduced.**"[4]

Consequently, the non-application of *Galang* is more than justified.

Furthermore, contrary to the *ponente's* finding, it is my humble belief that Respondent is not guilty of forum shopping.

In *Commissioner of Customs v. Pilipinas Shell Petroleum Corporation*[5], it was held that there is no forum shopping even when both cases have the same parties, originated from the same factual antecedents and involve the same provision of law, as long as the subject matter, the cause of action, the issues involved and the reliefs prayed for are not the same.

Similarly, a careful reading of the Petition for Review filed with the Third Division of this Court ("CTA case") *vis-à-vis* the Petition for Declaratory Relief and Permanent Injunction filed with the RTC of Manila ("RTC-Manila case") reveals that although both cases have substantially the same parties (*i.e.,* the NFA was made a Respondent in the RTC-Manila case, but not in the CTA case), the subject matter, cause of action, issues raised and reliefs prayed for are not the same.

The subject matter in the CTA case is the public auction of the seized rice shipments. On the other hand, the subject matter of the RTC-Manila case is the declaration of validity of construction of NFA Memorandum Circular No. AO-2K13-03-003 in relation to Presidential Decree No. 4 and Republic Act ("R.A.") No. 8178 as regards Respondent's alleged right to import rice without need of import permit pursuant to World Trade Organization- General Agreement on Tariffs and Trade (WTO-GATT).

The cause of action in the CTA case is based on the notice of public auction posted in Petitioners' website, to be conducted in order to dispose the seized rice shipments; while the cause of action in the RTC-Manila case is NFA Memorandum Circular No. AO-2K13-03-003, which requires an importer to have an NFA import permit prior to the importation of rice.

Furthermore, Respondent filed the CTA case to assail the seizure and forfeiture proceedings of Petitioners, as well as the conduct of the public auction. Thus, in the Petition for Review with the Court *a quo*, the main issue involved is the validity of the seizure and forfeiture proceedings and the procedure for the public auction. On the other hand, Respondent filed the RTC-Manila to question the validity of NFA Memorandum Circular No. AO-2K13-03-003 and raised the issue of whether or not it is entitled to a declaratory relief.

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4 *Emphasis supplied.*
5 G.R. No. 205002, April 20, 2016.

Likewise, a comparison of prayers in the CTA case and RTC-Manila case show that they are not the same:

Petition for Review (CTA case)	**Petition for Declaratory Relief and Permanent Injunction ("RTC-Manila case")**
WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that: 1. Upon the filing of this Complaint, an *ex parte* Temporary Restraining Order (TRO)/writ of preliminary injunction be issued against the Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, **from conducting any public auction concerning the rice shipments subject herein,** scheduled on 11 September 2014 with the MICP, **and from doing similar acts or otherwise conducting any similar sale or disposition of Petitioner's rice shipments,** while the propriety and validity of its actions are still at issue and subject to judicial determination; 2. Pending trial on the merits, the Honorable Court issue a Temporary Restraining Order (TRO) and/or	WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that: 1. Upon the filing of this Complaint, an *ex parte* Temporary Restraining Order (TRO) effective for 72 hours be immediately issued against the Respondents to enjoin and restrain them, all those acting for and in their behalf, and all their agents and responsible officers, from: a. **Requiring the procurement of an Import Permit when importing rice;** b. **Seizing and holding all of Petitioner's incoming rice shipments,** including but not limited to those covered by Bills of Lading Nos…and those other shipments which have recently landed, previously landed, those which are expected to arrive, or will arrive after the filing of the instant Petitioner or during its pendency, in any Philippine port or any port in Metro Manila…;

Writ of Preliminary Injunction enjoining and restraining Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from: a. **Proceeding with the public auction scheduled** on 11 September 2014 or any time thereafter; b. **Selling or otherwise disposing the subject property either through sale, public auction, donation or any alternative mode of disposition**, on 11 September 2014 or any time thereafter, and c. **From doing any similar acts that would dispose Petitioner's rice shipments or otherwise deprive him thereof**, of *[sic]* while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial	c. Implementing any Alert Orders, Hold Orders, and issuances in relation to Petitioner's rice importation or; d. Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated below are still at issue and subject to judicial determination; 2. Pending trial on the merits, the Honorable Court issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining Respondents, all those acting for and in their behalf, and all their agents and responsible officers, from: a. **Implementing NFA Memorandum Circular No. AO-2K13-03-003, as well as the NFA Council Resolution No. 670-2013-C**; b. Requiring the procurement of Import Permits when importing rice; c. Seizing the incoming rice shipments of the Petitioner, including those covered by the above-mentioned Bills of Lading, those which have recently

determination; and, *[sic]* 3. Pending trial on the merits, the Honorable Court issue **an order releasing the subject rice shipments upon posting of a bond** by the Petitioner, in an amount equivalent to the value of the subject rice shipments as assessed and valued by the Bureau of Customs and payment of the 50% out-quota tariff due on the subject rice shipments, including the demurrage and storage charges thereon, and DIRECTING the Bureau of Customs, Respondent Commissioner of Customs, and all those acting in their behalf, to ACCEPT and PROCESS the payments, and to immediate *[sic]* release all the rice shipments, which are highly perishable goods. 4. After trial on the merits and hearing, judgment be rendered making said Preliminary Injunction permanent, declaring the importation of Petitioner's rice shipments as legal, and ordering the return of any bond posted or paid by the Petitioner in	landed, previously landed, those which are expected to arrive, or will arrive after the filing of the instant Petitioner or during its pendency, in any Philippine port or any port in Metro Manila... and/or refusing to release the same on the basis of the lack of an Import Permit through the implementation of any Alert Orders, Hold Orders, and other issuances, and; *[sic]* d. Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated below are still at issue and subject to judicial determination. *[sic]* 3. After the conduct of necessary proceedings, the Honorable Court issue a Writ of Preliminary Injunction, effective from the date of the filing of the instant Petition up to finality of the same, enjoining the Respondents, all those acting for and in their behalf, and all their agents and responsible officers, from committing the above-mentioned acts, after a bond shall have been posted by the Petitioner to answer for whatever damages that the Respondents may suffer by

relation to the instant proceedings, or ordering the release of any rice shipments being still in the custody of the Respondents. Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for.	virtue of its issuance over and above all claims and counterclaims; 4. After trial on the merits and hearing, the Honorable Court make such writ of Injunction permanent and **declare Memorandum Circular No. AO-2K13-03-003, as well as the NFA Council Resolution No. 670-2013-C as irregular and/or illegal,** that the Respondents have no legal authority and power to require the procurement of Import Permits when importing rice, and conversely, that the Petitioner has the legal right to import rice without the need to procure Import Permits, and; *[sic]* 5. After trial on the merits and hearing, the Honorable Court render a Decision perpetually enjoining Respondents, all those acting for and in their behalf, and all their agents and responsible officers, from committing the above-mentioned acts. Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for.

Hence, applying the doctrine in *Pilipinas Shell*, there was no forum shopping in the case at bar.

On a final note, but not any less important, is the glaring fact that this Court's appellate jurisdiction should not be limited to cases which involve decisions by the Commissioner of Customs.

It has been held that the appellate jurisdiction of this Court is not limited to cases which involve decisions of the Commissioner of Internal Revenue.[6] If the actions of the administrative agency concerned amount to estoppel, then it is an exception to the rule on exhaustion of administrative remedies and resort to the Court without waiting for a decision is justified.[7] This is because Section 7(a)(1) of Republic Act No. 1125, as amended by Republic Act No. 9282, patently provides that the jurisdiction of the Court of Tax Appeals includes other matters arising under the National Internal Revenue Code or other law as part of law administered by the Bureau of Internal Revenue, to wit:

> "Sec. 7. *Jurisdiction.* - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **<u>other</u>** **<u>matters</u> arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**[.]"[8]

I see no reason not to apply the same rule as to the Commissioner of Customs, especially when Section 7(a)(4) of Republic Act No. 1125, as amended by Republic Act No. 9282 is a parallel provision of the one cited above:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, **or <u>other</u> <u>matters</u> arising**

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6 Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004; Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc., G.R. No. 169225, November 17, 2010.

7 Allied Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 175097, February 05, 2010.

8 *Emphasis and underscoring supplied.*

> **under the Customs Law or other laws administered by the Bureau of Customs**[.]"[9]

A parallel provision should be construed similarly for there is absolutely no evidence that the Legislature intended to treat them differently.

From all of the foregoing, I vote to **AFFIRM** the Resolutions dated September 21, 2016 and November 25, 2016 of the Court in Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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9 *Emphasis and underscoring supplied.*

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS,
Petitioner,

-versus-

JADE BROS FARM AND LIVESTOCK, INC.,
Respondent.

CTA EB No. 1566
(CTA Case No. 8886)

Members:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 04 2018 3:35 p.m.

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Concurring and Dissenting Opinion

MANAHAN, J.:

With all due respect to my esteemed colleague, Honorable Associate Justice Cielito N. Mindaro-Grulla, I vote to affirm the assailed Resolutions dated September 21, 2016 and November 25, 2016 rendered by the Third Division of this Court as far as the ruling on the violation of the rule against forum shopping is concerned, but dissent to the finding that a decision of the Commissioner of Customs is necessary before the petition can be filed before this court, hence, prematurity as a ground for dismissal of the petition does not lie in this case.

In the case of *Surendra Gobindram Daswani vs. Banco De Oro Universal Bank and Register of Deeds Of Makati City,*[1] which cited the earlier case of *Yap vs. Chua,* the Supreme Court defined **forum shopping** as **"the institution of two or**

[1] G.R. No. 190983, July 29, 2015.

more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. Forum shopping is resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for certiorari."

The Supreme Court in this case *a quo*, further ruled, to wit:

"Following this line of reasoning, one can conclude that forum shopping is always willful and deliberate on the part of the litigant. To secure a higher percentage of winning, a party resorts to the filing of the same suits in various fora, without any regard for the resulting abuse to the courts, to the other party, and to our justice system. This malicious ulterior motive compels a party to violate the rules against forum shopping notwithstanding its pernicious effects. xxx

Moreover, in determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: '(a) [there is] identity of parties, or at least such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) [that] the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case."

Applying the foregoing ruling to the instant case, although the cause of action pending before the regional trial court (RTC) is for declaratory relief and the other is for quashal of the public auction sale of the alleged imported rice, the judgment that may be rendered in the RTC would amount to res judicata in this case, considering that a ruling that would adjudge the NFA Memorandum Circular No. AO-2K13-03-003, as valid or invalid, will result in either the allowance or disallowance of the proposed sale of the seized imported rice through public auction and the logical release of said imported goods to the respondent or contrariwise, detention by the petitioner of the same. The material body of evidence that have been and will be used to substantiate the claims of the petitioner and respondent in both the RTC and this court is on all fours the same.

As aptly cited in the *ponencia*, and which I wish to highlight anew, portions of which are hereinafter quoted,

> Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of res judicata by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. *(Underscoring ours)*

the case in the RTC and in this Court have the same essential facts and material evidence to prove their cases, and the resultant relief will be *in esse*, the same.

Similarly, malice is absent and wanting in this case, as the respondents filed the petition before this Court not to ensure a higher percentage of winning but to secure a quick and speedy remedy of injunction to the threatened public auction of its imported goods, which, RTC cannot legally grant, as the CTA has the exclusive jurisdiction on all tax and customs-related matters under SEC. 7 (a)(4) of Republic Act No. (RA) 1125 as amended, particularly on customs seizure proceedings. Said exclusive jurisdiction of the CTA on tax and customs matters has been re-confirmed and upheld by the Supreme Court En Banc ruling in *Banco de Oro et. al. vs. Republic of the Philippines et. al.*[2] , and recently cited anew in the case of *Petron Corporation vs. Commissioner of Internal Revenue, et. al.,*[3] , to wit:

> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals. In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

As to the issue of prematurity, the same does not lie to deprive this Court of its jurisdiction over the case. The subject matter of the petition seeks to enjoin the petitioner from proceeding with the intended, twice postponed public auction of the imported rice as part of its Seizure and Forfeiture

[2] G.R. No. 198756, August 16, 2016.
[3] G.R. No. 207843, April 2018.

Proceeding. Prior to this original administrative action of the petitioner, respondent had an earlier letter-request for the release of the imported rice shipment under cash bond but instead of replying to this request, petitioner filed the Seizure and Forfeiture Proceedings with concomitant issuance of several Warrants of Seizure and Detention (WSD) on the imported rice shipment. Respondent reiterated its earlier letter-request by filing a Consolidated Motion for the Urgent Release under Cash Bond before the said proceedings. However, instead of acting on the said motion, petitioners issued two Notices of Public Auction, thus, compelling the respondents to seek relief before the Court *a quo.* Such action on the part of the petitioner can be deemed a decision of the Commissioner of Customs on the pending request for release under bond, thus falling within the exclusive jurisdiction of the Court of Tax Appeals under SEC. 7 (a)(4) of RA 1125 as amended.

For all the foregoing, I vote to **DENY** the petition for review as far as the ruling on prematurity as a cause for dismissal is concerned but **AFFIRM** the finding of violation of forum shopping as ground for dismissal of this case in the assailed resolutions.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice