REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Petitioner,

-*versus*-

RMJR GRAINS CENTER CORPORATION,
Respondent.

CTA *EB* NO. 2113
(CTA Case Nos. 9156, 9157, 9158, 9159, & 9160)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

NOV 23 2020 11:50 a.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition")[1] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals***[2] ("RRCTA"), seeking the reversal and setting aside of the Decision,[3] dated 8 February 2019, and the Resolution,[4] dated 12 July 2019, promulgated by the Court of Tax Appeals ("CTA") Special First Division ("Court in Division") and praying for the Court *En Banc* to render a decision dismissing and/or denying the consolidated Petitions for Review before the Court in Division for lack of merit.[5]

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[1] See Petition, Records, Vol. 1, pp. 44-127, with annexes.
[2] A.M. No. 05-11-07-CTA, November 22, 2005.
[3] Annex "A" of the Petition, Records, Vol. 1, pp. 69-116.
[4] Annex "B" of the Petition, Records, Vol. 1, pp. 117-127.
[5] See Prayer in the Petition, Records, Vol. 1, p. 62.

The Parties

Petitioner, **Commissioner of Customs**, is the head of the Bureau of Customs, a national government agency attached to the Department of Finance. It is charged with assessing and collecting customs revenues, curbing illicit trade and all forms of customs fraud, and facilitating trade through an efficient and effective customs management system. Its head office is at the Bureau of Customs, Port Area, Manila.

Respondent, **RMJR Grains Center Corporation**, is a duly registered corporation with principal place of business at 093 B.S. Aquino Avenue, Barangay Tangos, Baliwag, Bulacan.

The Facts

The following are the undisputed facts as derived from the Assailed Decision:[6]

"On November 3, 2013, the following shipment containers, said to contain bags of White Rice consigned to petitioner, arrived from Thailand on board different vessels, to wit:

CTA CASE NO.	SHIPMENT CONTAINER SIZE	NO. OF BAGS OF RICE	VESSEL	REGISTRY NO.
9156	30x20'	13,200	CAPE FRAISER	SIC-0121
9157	10x20'	4,400	CAPE FRAISER	SIC-0121
9158	20x20'	8,800	MOL WISDOM	MOL-0088
9159	39x20'	17,160	OTANA BHUM	RCL-0088
9160	12x20'	5,280	MAMITSA 0590-026E	EGP-0147

xxx xxx xxx

Petitioner paid the duties and taxes on the shipments covered by the import permits and as declared in the supporting documents, based on the In-Quota rate of 40%, under Tariff Heading No. 1006.3091A.

The Manila International Container Port (MICP) of respondent Bureau of Customs (BOC) conducted an examination of said shipments. Upon examination, said shipments were discovered to

[6] See Note 3, at pp. 71-76.

contain an excess importation of white rice. The discrepancies in the shipments of rice are as follows:

CTA CASE NO.	DECLARED NO. OF BAGS	ACTUAL NO. OF BAGS	EXCESS NO. OF BAGS	DISCREPANCY RATE
9156	13,200	15,000	1,800	12%
9157	4,400	5,000	600	12%
9158	8,800	10,000	1,200	12%
9159	17,160	19,500	2,340	12%
9160	5,280	6,000	720	12%

Petitioner paid the following amounts as appearing in the E2M Assessment Notices:

CTA CASE NO.	E2M NOTICE ASSESSMENT	TOTAL ASSESSED AMOUNT	PAYMENT REFERENCE NO.
9156	2013 L 277836	4,252,861	1HO131113DIMR694
9157	2013 L 277428	1,496,666	1HO081113DIMR682
9158	2013 L 277453	2,837,949	1HO081113DIMR682
9159	2013 L 277447	5,533,052	1HO081113DIMR682
9160	2013 L 280855	1,686,091	1HO131113DIMR695

The BOC released to petitioner the shipments covered by Import Permits MAVCSQ2013-11-105, MAVCSQ2013-11-098, MAVCSQ2013-11-097, MAVCSQ2013-11-100, and MAVCSQ2013-11-104, but withheld several containers not covered by the Import Permits, to wit:

CTA CASE NO.	IMPORT PERMIT NO.	NO. OF CONTAINERS WITHHELD	WITHHELD CONTAINER NOS.
9156	MAVCSQ2013-11-105	4	BMOU2745139, BMOU2832845, SEGU1482610 and SEGU1754391
9157	MAVCSQ2013-11-098	1	AKLU6000146
9158	MAVCSQ2013-11-097	2	CAIU2652210 and CMAIU1656955
9159	MAVCSQ2013-11-100	6	CAIU2113250, CAIU2184969, FCIU3098251, FSCU7471486, GLDU5768395, and REGU3136010
9160	MAVCSQ2013-11-104	1	HMCU3012577

[initials]

The District Collector of Customs (MICP) issued a Warrant of Seizure and Detention against the withheld containers for violation of Section 2530 (f) and (i) of the Tariff and Customs Code of the Philippines (TCCP), as amended, *viz.*:

CTA CASE NO.	SEIZURE IDENTIFICATION CASE NO.	DATE OF AMENDED WARRANT OF SEIZURE AND DETENTION	CONTAINER NOS.
9156	375-2014	July 25, 2014	BMOU2745139, BMOU2832845, SEGU1482610 and SEGU1754391
9157	377-2014	July 25, 2014	AKLU6000146
9158	374-2014	July 25, 2014	CAIU2652210 and CMAIU1656955
9159	379-2014	July 25, 2014	CAIU2113250, CAIU2184969, FCIU3098251, FSCU7471486, GLDU5768395, and REGU3136010
9160	378-2014	July 25, 2014	HMCU3012577

On October 15, 2014, the District Collector of Customs (MICP) issued the following Orders forfeiting the aforesaid containers or the excess rice importations of petitioner:

CTA Case No.	Date of Order	Seizure Identification No.
9156	October 15, 2014	375-2014
9157	October 15, 2014	377-2014
9158	October 15, 2014	374-2014
9159	October 15, 2014	379-2014
9160	October 15, 2014	378-2014

On January 21, 2015, the excess rice importations of petitioner were the subject of sale via auction by the Auction and Cargo Disposal Division (ACDD) of MICP. The proceeds of the public auction were held in escrow pending the final determination of the case. The details of the auction are as follows:

SEIZURE IDENTIFICATION NO.	WINNING BID AMOUNT	OFFICIAL RECEIPT NO.
375-2014	P4,866,880.00	8242815
377-2014		
374-2014		
379-2014	P4,866,880.00	8242811
378-2014		
TOTAL	**P9,733,760.00**	

On September 2, 2015, petitioner received the following Decisions, all dated August 27, 2015, wherein respondent denied petitioner's appeal and affirmed the Forfeiture Orders dated October 15, 2014 of the District Collector of Customs (MICP):

CTA CASE NO.	DATE OF DECISION	SEIZURE IDENTIFICATION NO.
9156	August 27, 2015	375-2014
9157	August 27, 2015	377-2014
9158	August 27, 2015	374-2014
9159	August 27, 2015	379-2014
9160	August 27, 2015	378-2014

xxx xxx xxx"

Thereafter, Petitions for Review were filed and consolidated before the Court in Division.

On 8 February 2019, the Court in Division rendered the Assailed Decision, the dispositive portion of which provides as follows:

> "**WHEREFORE,** the instant Petitions for Review are hereby **GRANTED.** The Court hereby declares [respondent]'s excess rice shipments, covered by Bills of Lading Nos. ICS310029, ICS310030, ICS311032, ICS310031, and 050300766382 as having been legally imported into the Philippines. Considering that [respondent]'s rice shipments have already been auctioned, respondents are hereby **ORDERED TO RELEASE** to the [respondent], the proceeds of the auction sale held last January 21, 2015, which are presently held in escrow, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importations.
>
> **SO ORDERED.**"

On 12 July 2019, petitioner's Motion for Reconsideration was denied.

With such denial, petitioner filed a Motion for Extension on 5 August 2019, requesting for additional time to file the instant Petition before this Court,[7] which was granted by this Court in a Resolution, dated 8 August 2019.[8]

On 23 August 2019, the Petition was filed via registered mail.

In a Resolution, dated 18 September 2019, respondent was ordered to file a Comment on the Petition,[9] which it filed on 1 October 2019.[10]

In a Resolution, dated 7 November 2019, this case was submitted for decision.[11] Hence, this Decision.

The Assigned Errors[12]

Whether the Court in Division erred in granting the consolidated Petitions for Review filed by respondent.

Arguments of the Parties

Petitioner's Arguments[13]

1. The Court in Division erred in granting the consolidated Petitions for Review filed by respondent:

    a. The Philippine government was authorized to require import permits at the time of importation; and

    b. The interregnum from 1 July 2012 to 24 July 2014 did not deprive the Philippine government the authority to impose the import permit requirement for rice importations.

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[7] Records, Vol. 1, pp. 1-42.
[8] *Id.*, at p. 43.
[9] *Id.*, at pp. 129-130.
[10] *Id.*, at pp. 131-134.
[11] *Id.*, at pp. 135-137.
[12] See Issues in the Petition, Records, p. 54.
[13] See Note 7, at pp. 55-62.

Respondent's Arguments[14]

1. The instant Petition deserves scant consideration as it is a mere rehash of the arguments already threshed out in the Assailed Decision and Assailed Resolution.

2. As the Philippine government failed to request for an extension of its special treatment from 1 July 2012 to 24 July 2014, it cannot impose any quantitative import restrictions on rice imports. This makes the ***National Food Authority ("NFA") Memorandum Circular No. AO-2K13-03-003***, requiring import permit for rice importation, ultra vires for countermanding the ***World Trade Organization ("WTO") Trade Agreement***, which has the force and effect of law, by the doctrine of incorporation.

The Ruling of the Court En Banc

The instant Petition for Review lacks merit. The arguments raised are a mere rehash of those addressed in the Assailed Decision and Assailed Resolution.

This case presents a scuffle between local law (*i.e.*, ***Republic Act No. 8178***, otherwise known as the ***"Agricultural Tariffication Act" ("RA 8178")***, which is being implemented by ***NFA Memorandum Circular No. AO-2K13-03-003***) and international treaty (particularly the ***WTO Trade Agreement***). However, a careful reading would show that these laws harmoniously co-exist with each other.

The WTO Trade Agreement is part of Philippine domestic laws.

To obtain a footing in global trade, the Philippines became a member of the ***General Agreement on Tariffs and Trade ("GATT")*** on 27 December 1979.[15] Under the ***GATT*** regime, however, the contracting parties did not have an institutionalized body administering the agreements or a dependable system of dispute settlement.[16] Thus, after decades of negotiations, the WTO was established as the administering body, and the ***WTO Trade Agreement*** was approved by its members in 1994, incorporating improvements in the ***GATT***.[17]

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[14] *Id.*, at pp. 131-133.
[15] https://www.wto.org/english/thewto_e/gattmem_e.htm; last accessed: 13 October 2020.
[16] Tañada v. Angara, G.R. No. 118295, 2 May 1997.
[17] *Ibid.*

Following the signing of the Final Act, the Philippines ratified and agreed to submit the ***WTO Trade Agreement*** for the consideration of its appropriate authorities with the objective of having the same approved in accordance with its procedures. This was complied with on 14 December 1994, when the Philippine Senate adopted Senate Resolution No. 97 signifying its concurrence to the ratification by the President of the Philippines of the ***WTO Trade Agreement.***[18]

By virtue of this concurrence, not only has the Philippines become a member of the WTO, the ***WTO Trade Agreement*** became part of Philippine laws through the Treaty Clause of the ***1987 Constitution.***

The Treaty Clause can be found in ***Section 21, Article VII of the 1987 Constitution***, which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." Once a treaty has been concurred by at least two thirds (2/3) of all the Members of the Senate, it becomes part of the law of the land and is treated as a domestic law. Through Senate Resolution No. 97, which showed concurrence by at least two thirds (2/3) of the Members of the Senate on the ***WTO Trade Agreement***, the same automatically became domestic law. Hence, the ***WTO Trade Agreement*** has the same effectivity as laws passed by Congress.

Moreover, even without the Senate's concurrence to the ***WTO Trade Agreement***, the same can be said to be part of the country's domestic laws through the Incorporation Clause, which is found in ***Section 2, Article II of the 1987 Constitution*** and states that "[t]he Philippines ... adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations." Following this doctrine, a country is bound by generally accepted principles of international law, which are considered to be automatically part of its own laws. As the ***WTO Trade Agreement*** embodies generally accepted principles of international trade, the same is incorporated in our domestic laws.

In ***Tañada v. Angara,***[19] the Supreme Court conclusively ruled that the ***WTO Trade Agreement*** is part of domestic law, *viz.:*

> "The WTO Agreement provides that '(e)ach Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.'

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[18] *Ibid.*
[19] G.R. No. 118295, 2 May 1997.

xxx xxx xxx

> Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution 'adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations.' By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is pacta sunt servanda - international agreements must be performed in good faith.'"

It cannot be denied, then, the ***WTO Trade Agreement*** is part of Philippine domestic laws.

The WTO Trade Agreement prohibits the use of discretionary import licensing.

The ***WTO Trade Agreement*** prohibits the use of quantitative restrictions ("QRs"). ***Paragraph 2 of Article 4 of the WTO Trade Agreement on Agriculture*** specifically mandates that member countries "shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5." The measures proscribed under said provision include, as follows:

> "These measures include quantitative import restrictions, variable import levies, minimum import prices, **discretionary import licensing,** nontariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, nonagricultural-specific provisions of GATT 1994 or of the other Multilateral Trade Agreements in Annex lA to the WTO Agreement."
> (Emphasis and Underscoring, Ours)

This was interpreted by the WTO, *viz.*:[20]

> "d) 'discretionary import licensing'

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[20] Jade Bros Farm and Livestock, Inc. vs. Bureau of Customs and Commissioner of Customs, CTA Case No. 8886, 21 September 2016.

55. The Panel in Turkey - Rice examined the question whether Certificates of Control issued by Turkey were 'import licences' and whether the issuance of these certificates constituted 'discretionary import licensing'. Recalling that the term 'import licence' is not defined in the Agreement on Agriculture or elsewhere in the WTO Agreement, and recalling the definition of 'import licensing' in the Agreement on Import Licensing Procedures, the Panel noted:

> '[N]ot all documents giving the permission to import may be necessarily considered to be 'import licences'. As noted by the parties, the importation process is often a complex procedure during which a number of steps must be completed in order to obtain the permission to import certain products. Throughout this process, governments may require that written documents be obtained and then produced to certify the completion of certain steps and thus the compliance with certain legal requirements, in order to allow the importation of goods and their final entry into the importing market. Each of these steps and documents may serve particular objectives. Strictly speaking, these special documents, when used for purposes such as sanitary and phytosanitary control, customs clearance, payment of taxes or duties, are not to be considered as 'import licences'.
>
> ... not all practices of 'import licensing' would be 'discretionary import licensing'. 'Discretionary' is defined as 'pertaining to discretion [or] left to discretion'. 'Discretion' can be characterized in turn as the '[f]reedom to decide or act as one thinks fit, absolutely or within limits; having one's own judgement as the sole arbiter'.
>
> xxx xxx xxx
>
> **<u>... 'discretionary import licensing' ... appears as one of the measures in the indicative list of 'measures of the kind which have been required to be converted into ordinary customs duties'. The object and purpose of Article 4 of the Agreement on Agriculture, 'to achieve improved market access conditions for imports of agricultural products by permitting only the application of ordinary customs duties', would be undermined if Members could decide, at their discretion, whether or not to grant permission for the importation of a good, or if they could decide, at their discretion, whether or not to grant a document that is indispensable for such importation.</u>**
>
> This interpretation is consistent with the definition agreed by WTO Members in the context of the Import Licensing Agreement. Article 1.1 of the Import Licensing Agreement and its footnote, when defining **<u>import licensing, refer to licensing and 'other similar administrative procedures'.</u>** We note in this regard that the footnote to the Annual Questionnaire on import licensing procedures, adopted by the WTO Committee on Import

> Licensing, indicates that 'similar procedures': '[A]re understood to include technical visas, surveillance systems, minimum price arrangements, and other administrative reviews effected as a prior condition for entry of imports.'"

(Emphasis and Underscoring, Ours)

Given the foregoing discussion, the ***WTO Trade Agreement*** prohibits member countries from using discretionary import licensing, or the discretionary grant or refusal of a country's authorities to issue documents necessary for the importation of goods, as part of its policies on imported goods.

<u>Special Treatment accorded to developing countries vis-à-vis the prohibition against the use of QRs.</u>

Despite the general prohibition against the use of QRs, ***Article 15 of the WTO Trade Agreement on Agriculture*** provided a safety net for developing country members by mandating a flexible application of the ***WTO Trade Agreement*** in their case, as follows:

> "Article 15
> Special and Differential Treatment
>
> 1. In keeping with the recognition that differential and more favourable treatment for developing country Members is an integral part of the negotiation, special and differential treatment in respect of commitments shall be provided as set out in the relevant provisions of this Agreement and embodied in the Schedules of concessions and commitments.
>
> 2. **<u>Developing country Members shall have the flexibility to implement reduction commitments over a period of up to 10 years. Least-developed country Members shall not be required to undertake reduction commitments."[21]</u>**
>
> (Emphasis and underscoring, Ours)

This Special Treatment was further tackled in ***Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4, WTO Agreement on Agriculture***,[22] which provides as follows:

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[21] https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_art15_oth.pdf; last accessed: 14 October 2020.
[22] *Ibid.*

"Annex 5

Special Treatment with Respect to Paragraph 2 of Article 4

Section A

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

(a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ('the base period');

(b) no export subsidies have been provided since the beginning of the base period for the designated products;

(c) effective production-restricting measures are applied to the primary agricultural product;

(d) such products are designated with the symbol 'ST-Annex 5' in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and

(e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to apply special treatment in respect of the designated products by complying with the provisions of paragraph 6. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 after the end of the implementation period shall be completed

> **within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.**
>
> Section B
>
> xxx xxx xxx
>
> **8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the time-frame of the 10th year itself following the beginning of the implementation period."**
> (Emphasis and underscoring, Ours)

Consequently, developing nations, such as the Philippines, are entitled to a Special Treatment (*i.e.,* exemption) on the general prohibition against QRs for the first ten (10) years of its membership, which may be re-negotiated for extensions. As long as the Special Treatment is in effect, developing countries may impose QRs, such as discretionary import licensing, on importations of goods into their jurisdictions.

From 1 July 2012 to 24 July 2014, the Philippines was not authorized to impose import permit requirements for importation of rice within the country. Respondent lawfully imported rice without a permit from the NFA.

Following these discussions, the Philippines was temporarily permitted to impose QRs, such as discretionary import licensing through import permits issued by the NFA, on the importation of rice from the years 1995 to 2005. Pursuant to ***Section B(8) of Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4, WTO Agreement on Agriculture***, the Philippines negotiated and was able to request for an extension of the Special Treatment from 1 July 2005 to 31 June 2012.[23] After this period, the Philippines negotiated again for an extension of the Special Treatment but was only able to successfully obtain said extension on 24 July 2014 when the WTO Decision on Waiver Relating to Special Treatment for Rice of the Philippines ("Waiver")[24] was issued, effectively extending the Special Treatment up to 30 June 2017 only.

[23] Rectification and Modification of Schedule LXXV – Republic of the Philippines contained in the WTO documents G/MA/TAR/RS/99/Rev.1 dated 27 September 2006 and WT/Let/562 on 08 February 2007.
[24] WTO document WT/L/42 dated 24 July 2014.

As such, the Philippines did not enjoy Special Treatment from the general prohibition against QRs **from 1 July 2012 to 24 July 2014**, the date of issuance of the Waiver. The Waiver cannot be retroactively applied since "[l]aws shall have no retroactive effect unless the contrary is provided"[25] and "[u]nless a different intention appears from the treaty or is likewise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."[26]

During this period, the Philippines was bound to comply with its treaty obligation under the ***WTO Trade Agreement*** (*i.e.,* to prohibit the imposition of any QRs on importation of goods within the country). Accordingly, it could not impose any import permit or license requirement during this interval (*i.e.,* 1 July 2012 to 24 July 2014) for importation of rice. Any form of QRs on rice importation imposed by the government during this period would be ultra vires.

As rice importation in the present Petition occurred on 3 November 2013, it is covered by the interregnum. Consequently, this means that respondent lawfully imported rice without obtaining any import permit or other license from the government (*i.e.,* NFA).

<u>As there is no need for an NFA import permit to import rice, petitioner's forfeiture was uncalled for.</u>

As respondent's importation of rice without any import permit from the NFA was lawful and did not violate any law to the contrary, petitioner improperly forfeited respondent's imported rice based on ***Section 2530 (f) of the Tariff and Customs Code of the Philippines*** which provides, to wit:

> "Sec. 2530.Property Subject to Forfeiture Under Tariff and Customs Laws. — Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> xxx xxx xxx
>
> f. Any article of prohibited importation or exportation, **<u>the importation or exportation of which is effected or attempted contrary to law,</u>** and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."
> (Emphasis and underscoring, Ours)

[25] Article 4, The New Civil Code of the Philippines.
[26] Article 28, The Vienna Convention on the Law on Treaties.

As provided by the above provision, forfeiture can be effected only if the importation or exportation of an article is effected or attempted contrary to law. Since an import permit from the NFA was not necessary for the importation of rice made 1 July 2012 to 24 July 2014, importation of rice without said permit during the aforementioned period is not contrary to law. An importation that does not violate any law should not result in the forfeiture of the imported goods.

Thus, petitioner's forfeiture of respondent's imported rice, which was imported on 3 November 2013, due to the absence of an NFA import permit was inappropriately made and uncalled for. Consequently, the forfeited imported rice, or the value thereof, should be returned to respondent.

RA 8178 recognizes the Philippines' treaty obligations under the WTO Trade Agreement.

Petitioner posits that the government, through the NFA, had the authority to require import permits for the purpose of importing rice from 1 July 2012 to 23 July 2014 pursuant to ***RA 8178***. This is misplaced.

As explained above, the ***WTO Trade Agreement*** is part of the Philippines' domestic laws. As such, it should be given the same effect as laws passed through Congress. In fact, its effectivity within the territorial bounds of the country is recognized under ***RA 8178. Section 5 of RA 8178,*** which amended ***Section 6 (a) of Presidential Decree No. 4,*** recognizes the treaty obligations of the Philippines under the ***WTO Trade Agreement*** *vis-à-vis* the prohibition as to QRs, *viz*:

> "Sec. 6. (a) Powers. –
>
> (xii) to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.
>
> "In the exercise of this power, the Council after consultation with the Office of the President shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: **Provided, That this requirement shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO.** The Authority shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other

marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government."
(Emphasis and Underscoring, Ours)

Given the foregoing, petitioner cannot depend on ***RA 8178*** as basis for requiring an NFA import permit as a prerequisite for rice importation considering that, on the contrary, this law expressly recognizes the treaty obligation of the Philippines to enforce the ***WTO Trade Agreement*** (by specifically referencing the said international law). Rather, ***RA 8178*** mandates that the Philippines is duty bound to remove any QRs, such as discretionary import licensing, as part of its policy in accordance with the ***WTO Trade Agreement,*** and unless there is a Special Treatment in effect.

Any regulation to the contrary, such as ***NFA Memorandum Circular No. AO-2K13-03-003***, which sought to require an NHA import permit as a prerequisite for rice importation during the interregnum, is ultra vires. As between ***NFA Memorandum Circular No. AO-2K13-03-003*** and the ***WTO Trade Agreement,*** the latter prevails, as rules and regulations cannot go beyond the terms of the law which it seeks to implement.[27]

WHEREFORE, the instant Petition for Review filed by petitioner, Commissioner of Customs, is hereby **DENIED** for lack of merit. Accordingly, the Decision, dated 8 February 2019, and Resolution, dated 12 July 2019, are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

[27] Cawad, et al. v. Abad, et al., G.R. No. 207145, 28 July 2015.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice