REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FABROSSI FOOD GROUP INC., ENZED TRADE INC., D. ASILO MEATSHOP, D.E.A. MEAT TRADING AND IMPORT CORP., FOOD SPHERE INC., VIRGINIA FOOD, INC., NIAN'S TRADING, INC., ALTERNATIVES FOOD CORP., and PHILIPPINE ASSOCIATION OF MEAT PROCESSORS, INC. (PAMPI),
Petitioners,

- versus -

COMMISSIONER OF CUSTOMS as represented by the HON. REY LEONARDO B. GUERRERO,
Respondent.

CTA Case No. 10111

Members:
DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO *JJ.*

Promulgated:

SEP 22 2022 ; 3:15 p.m.

x - x

DECISION

REYES-FAJARDO, J.:

The Case

Before the Court is a Petition for Prohibition[1] filed by petitioners against respondent Commissioner of Customs (COC), praying that: (1) a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) be issued enjoining respondent from enforcing its demand for the payment of the differential rate of thirty-five percent (35%) from March 5, 2019 to May 16, 2019 and imposing

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1 *Order* dated September 16, 2021.

the corresponding surcharges and interests;[2] (2) Customs Memorandum Circular (CMC) No. 131-2019 be declared null and void;[3] and (3) the Demand Letters issued by the Bureau of Customs (BOC) District Collector be declared null and void.[4]

The Parties

Petitioners are members of the Philippine Association of Meat Processors Inc. (PAMPI) and are engaged in the importation of Mechanically Deboned Meat (MDM).[5]

Petitioner Fabrossi Food Group Inc. is a domestic corporation with business address at V&F Ice Plant and Cold Storage Inc., Unit 5, Brgy. Mambungan, Sumulong Highway, Antipolo City.[6]

Petitioner Enzed Trade Inc. is a domestic corporation with business address at Unit 222-223 Pacific Regency, 760 Pablo Ocampo St., Malate, Manila.[7]

Petitioner D. Asilo Meatshop is a sole proprietorship with business address at 129 A. Mabini Street, Brgy. Sta. Lucia, Novaliches, Quezon City.[8]

Petitioner D.E.A. Meat Trading and Import Corp. is a domestic corporation with business address at 131 A. Mabini Street, Brgy. Sta. Lucia, Novaliches, Quezon City.[9]

Petitioner Food Sphere Inc. is a domestic corporation with business address at 560 West Service Road, Paso de Blas, Valenzuela, Manila.[10]

Petitioner Virginia Food, Inc. is a domestic corporation with business address at Sitio Younglife, Cogon, Compostela, Cebu.[11]

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2 *Amended Petition*, Docket, Vol. 1, p. 257.
3 *Id.*
4 *Id.*
5 *Petition for Review*, Docket, Vol. I, p. 15.
6 *Id.*
7 *Id.* at 16.
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.*

Petitioner Nian's Trading, Inc. is a domestic corporation with business address at 2407 Rodriguez St., Balut, Tondo, Manila.[12]

Petitioner Alternatives Food Corp. is a domestic corporation with business address at Units 54 and 65, 3006 St., Augustine Square, 17 DRT Highway, Pinagbarilan, Baliuag, Bulacan.[13]

Petitioner PAMPI is a non-stock corporation with office address at Suite 203-204, Sunrise Condominium, Ortigas Ave., Greenhills, San Juan City.[14]

Respondent COC is charged with interpreting the provisions of the Customs Modernization and Tariff Act (CMTA)[15] and head of the BOC, a government agency tasked with the assessment and collection of customs duties and other lawful revenues from imported articles[16] with office address at the G/F, OCOM Bldg., Port Area, Manila.

The Facts

On April 27, 2017, Executive Order No. 23[17] (EO No. 23, s. 2017) was issued extending the effectivity of the Most-Favoured-Nation (MFN) rates of duty on certain agricultural products including Mechnically Deboned Meat (MDM).

Under EO No. 23, s. 2017, MDM is subject to the following duty rates:

2017	2018	2019	2020	2021
5%	5%	5%	5%	40%

Section 6 of the EO provides:

> **SECTION 6. Effectivity.** This Order shall take effect immediately following its complete publication in the Official Gazette or in a

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12 *Id.*

13 *Id.*

14 *Supplemental Petition for Review,* Docket, Vol. I., pp. 379 and 382.

15 An Act Modernizing the Customs and Tariff Administration [CMTA] (2016), Section 201 (a).

16 CMTA (2016), Sec 202.

17 Extending the Effectivity of the Most-Favored-Nation Rates of Duty on Certain Agricultural Products under Republic Act No. 10863, Otherwise known as the Customs Modernization and Tariff Act, and the other Philippine Commitments under the World Trade Organization Decision on Waiver Relating to Special Treatment for Rice of the Philippines, Executive Order No. 26, April 27, 2017, https://www.officialgazette.gov.ph/2017/04/28/executive-order-no-23-s-2017/.

> newspaper of general circulation in the Philippines, and **shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in R.A. No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply.**[18]

On February 14, 2019, Republic Act (RA) No. 11203 otherwise known as "An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes" (Rice Tariffication Law) was enacted.[19] RA No. 11203 took effect on March 5, 2019. RA No. 11203 amended some provisions of RA No. 8178 otherwise known as "An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, with Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and for other Purposes" (Agricultural Tariffication Act).[20]

On May 23, 2019, respondent issued the assailed CMC No. 131-2019,[21] which provides for the application of the higher MFN rate (40% for MDM) due to the effectivity of RA No. 11203, as follows:

> To: **ALL DEPUTY COMMISSIONERS**
> **ALL SERVICE DIRECTORS**
> **ALL DISTRICT / PORT COLLECTORS**
> **ALL OTHERS CONCERNED**
>
> **SUBJECT: APPLICABLE DUTY RATES FOR PRODUCTS UNDER EXECUTIVE ORDER NO. 23, SERIES OF 2017 RELATIVE TO REPUBLIC ACT NO. 11203 (RICE TARIFFICATION ACT)**
>
> With the effectivity of R.A. No. 11203 (Rice Tariffication Act), all concerned are informed of the reversion to the higher Most-Favoured-Nation (MFN) rates duty on certain agricultural products as part of the Philippine concessions or commitments under the World Trade Organization (WTO) Decision on Waiver relating to Special Treatment for Rice of the Philippines listed under E.O. 23, s. 2017.

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18 Boldfacing supplied.

19 An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes (2019).

20 An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, with Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and for other Purposes (1996).

21 Subject: Applicable duty rates for products under Executive Order No. 23, Series of 2017 relative to Republic Act No. 11203.

> Accordingly, the Bureau of Customs' Electronic to Mobile (E2M) System is hereto updated to reflect the modified rates pursuant to the said E.O.
>
> The Philippine Tariff Finder (PTF) was also updated by the Tariff Commission to reflect the said MFN rates.
>
> For your information and guidance.
>
> For records purposes, please confirm the dissemination of this Circular throughout your offices within fifteen (15) days from receipt thereof.
>
> (Sgd.)
> **REY LEONARDO B. GUERRERO**
> Commissioner, BOC

The District Collector of the Manila International Container Port ordered petitioners to pay additional duties amounting to ₱220,387,073.00,[22] plus surcharges and interests, as indicated in the Demand Letters[23] issued to petitioners. This amount reflects the uncollected tariff differential of 35% for MDM for the period March 5, 2019 to May 16, 2019.

On June 13, 2019, EO No. 82[24] (EO No. 82, s.2019) was issued as the economic conditions then warranted the continued application of the reduced rate of duties on certain agricultural products to mitigate the impact of high prices of goods (5% for MDM).[25] EO No. 82, s.2019 partly reads:

> **WHEREAS, the present economic condition warrants the continued application of the reduced rate of duties on certain agricultural products to mitigate the impact of high prices of goods;**
>
> WHEREAS, Section 1608 of RA No. 10863 authorizes the President of the Philippines, upon the recommendation of the National Economic and Development Authority (NEDA), to increase, reduce or remove existing rates of import duty; and

22 *Petition for Review*, Docket, Vol. I, p. 20.

23 *Id.* at pp. pp 92-105.

24 Entitled: Modifying the Nomenclature and Rates of Import Duty on Certain Agricultural Products Under Section 1611 of Republic Act No. 10863, Otherwise Known As the Customs Modernization and Tariff Act.

25 Modifying the Nomenclature and Rates of Import Duty on Certain Agricultural products Under Section 1611 of Republic Act No. 10863, Otherwise Known As The Customs Modernization and Tariff Act, Executive Order No. 82, June 13, 2019, https://www.officialgazette.gov.ph/2019/06/13/executive-order-no-82-s-2019/.

> **WHERAS, the NEDA Board recommends the maintenance of the tariff rates under EO No. 23 for mechanically deboned meat of chicken and turkey, and turkey meat and its offals.**
>
> ...
>
> SECTION 3. Levy on Articles. **Upon the effectivity of this Order**, all articles which are specifically listed in Annex A hereof and are entered into, or withdrawn from warehouses in the Philippines for consumption, shall be levied the MFN rates of duty as therein prescribed.
>
> SECTION 6. Effectivity. This Order shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation, and shall be applicable until 31 December 2020.[26]

On June 18, 2019, respondent issued CMC No. 144-2019,[27] informing all BOC personnel of the issuance of EO No. 82, s.2019 and the updating of the BOC E2M System to reflect the modified nomenclature and rates of import duty on certain agricultural products.

On July 11, 2019, petitioners filed a Petition[28] with the Court praying that:

1. A **TEMPORARY RESTRAINING ORDER** be issued enjoining Respondent from:

   1.1. Further imposing the higher duty rate of 40% on the importation of Mechanically Deboned Meat;

   1.2. Demanding the payment of differential rate of 35% from March 05, 2019 up to May 16, 2019 within the 15-day period as reflected in its Demand Letters; and

   1.3. Imposing the corresponding surcharges and interests as stated in its Demand Letters.

2. An ORDER be issued declaring **Customs Memorandum Circular No. 131-2019** null and void for violating the Constitution as well as pertinent laws.

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26 Boldfacing supplied.

27 Rates of import duty under Section 1611 of Customs Modernization and Tariff Act (CMTA) of 2016, in relation to Executive Order No. 82, series of 2019, modifying the nomenclature and rates of import duty on certain agricultural products, June 18, 2019.

28 *Petition for Review*, Docket, Vol. I, at pp 14-110.

3. An ORDER be issued directing the Bureau of Customs to return the overpayments made by the aggrieved importers.[29]

On July 29, 2019, the Court issued *Summons* requiring respondent to file and to serve upon petitioners an *Answer* to the *Petition* within fifteen (15) days from notice.[30]

On August 8, 2019, instead of an *Answer*, respondent filed a *Motion to Dismiss* the Petition. According to respondent, the Petition assailing the validity of CMC No. 131-2019 has become moot and academic with the issuance of CMC No. 144-2019, which superseded CMC No. 131-2019.[31]

On August 13, 2019, petitioners filed a *Manifestation with Motion to Declare as Nugatory the Demand Letters issued by Respondent,* stating that: (1) on August 1, 2019, they manifested in open court their intention to amend their *Petition* due to a supervening event that transpired after the filing of the case, specifically, the BOC reverted to the imposition of 5% MFN tariff rate as reflected in the E2M System; and (2) that they were withdrawing their prayer for the issuance of the TRO and/or WPI in relation to respondent's continued imposition of the 40% tariff rate. Petitioners shall maintain their prayer for a TRO and/or WPI against respondent's demand to pay the amount of ₱220,387,073.00, representing the differential rate of 35% from March 5, 2019 to May 16, 2019 and the imposition of surcharges and interests.[32]

On August 22, 2019, respondent filed respondent's *Comment* to petitioners' *Manifestation with Motion to Declare as Nugatory the Demand Letters Issued by Respondent* and argued that the subject of the Petition is CMC No. 131-2019 and not the assessment letters and that Court has no jurisdiction to inquire into the assessment letters issued by the BOC District Collector.[33]

On September 6, 2019, petitioners filed a *Reply* and asserted that the Court has jurisdiction to pass upon all issues ancillary to the main case. Petitioners also assert that no assessment letters were issued,

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29 Boldfacing supplied.

30 *Summons,* Docket, Vol 1, 111-112.

31 *Motion to Dismiss,* Docket, Vol. 1, pp. 175-179.

32 *Manifestation with Motion to Declare as Nugatory the Demand Letters issued by Respondent,* Docket, pp 181-184.

33 *Comment,* Docket, Vol. 1, pp. 196-198.

but rather demand letters were issued for several weeks after the release of petitioners' goods from the port of entry.[34]

On September 12, 2019, during the scheduled hearing of petitioners' *Urgent Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction,* petitioners presented their first witness, Fay Bernardo, who testified by way of a Judicial Affidavit. The presentation of petititioners' second witness, Joseph Jerome D. Ong, was dispensed with as his testimony would merely corroborate Fay Bernardo's testimony. In the same hearing, respondent was directed to file a Manifestation within ten (10) days or until September 23, 2019, on whether respondent would pursue the collection of the differential tariff of 35% covering the period March 5, 2019 to May 16, 2019.[35]

On September 16, 2019, respondent filed a *Manifestation* informing the Court that respondent would pursue the collection of the assessed differential tariff of 35% covering the period March 5, 2019 to May 16, 2019.[36]

On September 24, 2019, petitioners filed a *Manifestation*[37] stating that on September 23, 2019, they filed a *Comment on Respondent's Motion to Dismiss with Manifestation* through registered mail, and attached an advance copy of petitioners' *Comment.* In the *Comment,* petitioners claim that the Petition is not only to seek the nullification of CMC No. 131-2019 but also its adverse effects to the importers, which are:

> 1. The **ISSUANCE OF DEMAND LETTERS** (Not Assessment) demanding Petitioners to pay the 35% differential rate amounting to **P220,387,073.00** for the periods of <u>March 05, 2019</u> up to <u>May 16, 2019.</u>
>
> 2. The **IMPOSITION AND COLLECTION OF THE HIGHER RATE OF 40%** (instead of only 5%) for importing Mechanically Deboned Meat from <u>May 17, 2019</u> up to <u>June 18, 2019.</u>[38]

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34 *Reply (Re: Comment Dated 22 August 2019),* Docket, Vol. I, pp. 204-207.
35 Docket, Vol. I, pp. 209-216.
36 *Manifestation,* Docket, Vol. I., pp. 229-230.
37 *Manifestation,* Docket, Vol. I, pp. 217-219.
38 Boldfacing and underscoring supplied.

On September 26, 2019, petitioners filed a *Manifestation*[39] stating that due to respondent's re-imposition of the 5% MFN tariff rate on the importation of MDM, their Petition has to be amended, and prayed to admit their *Amended Petition*[40] filed as a matter of right under Section 2, Rule 10 of the Rules of Court, which prays for the following:

1. **TEMPORARY RESTRAINING ORDER (TRO)** and/or **WRIT OF PRELIMINARY INJUNCTION** be issued enjoining Respondent from:

   1.1. Enforcing its demand for the payment of the **differential rate of 35%** from <u>March 05, 2019</u> up to <u>May 16, 2019</u>; and

   1.2. Imposing the corresponding surcharges and interests as stated in the said Demand Letters until the final resolution of the case.

2. After due notice and hearing, a decision be issued declaring **Customs Memorandum Circular No. 131-2019** null and void for violating the Constitution and pertinent laws.

3. <u>After due notice and hearing, a decision be issued declaring the **DEMAND LETTERS** issued by District Collector, ATTY. ERASTUS SANDINO B. AUSTRIA null and void for being ultra vires, and for violating the Constitution and pertinent laws.</u>

On December 4, 2019, petitioner filed a *Manifestation* on the current situation affecting the meat industry in relation to CMC No. 131-2019.[41]

On January 21, 2020, petitioners Frabelle Corp. and Century Pacific Food, Inc. filed an *Ex-Parte Motion to Withdraw as Petitioners* as their respective managements deemed their further involvement in the case unnecessary.[42]

On February 26, 2020, petitioners filed a *Motion to Admit Attached Supplemental Petition*, which prays that:

1. The instant Supplemental Petition be admitted as part of the original pleading as amended;

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39 *Manifestation*, Docket, Vol. I, pp. 233-237.
40 *Amended Petition*, Docket, Vol. I, pp. 238-258.
41 *Manifestation*, Docket, Vol. I, pp. 350-352.
42 *Ex-Parte Motion to Withdraw*, Docket, Vol. I, pp. 355-357.

2. The Philippine Associate of Meat Processors Inc. (PAMPI) be included as one of the Petitioners; and

3. The Demand Letters issued by Acting District Collector of Manila International Container Port be declared null and void for being ultra vires.[43]

On March 16, 2020, petitioner Pampanga's Best Inc. filed a *Second Ex-Parte Motion to Withdraw As One of the Petitioners.*[44]

On July 8, 2020, the Court resolved to admit the *Amended Petition* of petitioners. The Court granted the *Ex-Parte Motion to Withdraw* filed by Frabelle Corp. and Century Pacific Food, Inc. Petitioners' prayer for the issuance of a TRO and/or WPI was held in abeyance pending the marking of petitioners' documentary exhibits.[45]

On July 16, 2020, the Court granted the *Second Ex-Parte Motion to Withdraw As One of the Petitioners* filed by petitioner Pampanga's Best Inc.[46]

On August 26, 2020, respondent filed a *Manifestation and Motion* asserting, among others, that the two (2) letters of PAMPI to respondent requesting respondent for assistance and clarification on the 40% duty instead of 5%, on imported MDM cannot be considered as a valid protest under Section 1006 of the CMTA since PAMPI is not the party adversely affected by the decision or ruling of the District Collector of Customs.[47] On the same date, respondent filed a *Comment (On Petitioners' Motion to Admit Supplement Petition).* Respondent asserts that the Motion to Admit Supplemental Petition of petitioners should be denied since the transactions, occurrences, or events alleged in the Supplemental Petition are not connected or related to the Amended Petition; and that it is fatally defective since the District Collector was not impleaded in the case.[48]

On September 8, 2020, petitioners filed their *Comment on the Manifestation dated August 25, 2020,* stating among others, that no assessment letters were issued by the District Collector but rather

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43 *Motion to Admit Supplemental Petition* and *Supplemental Petition,* Docket, Vol. I, pp. 359-366.
44 *Second Ex-Parte Motion to Withdraw As One of the Petitioners,* Docket, Vol. I, pp. 384-386.
45 *Resolution,* Docket, Vol. I, pp. 393-404.
46 *Resolution,* Docket, Vol. I, pp. 409-410.
47 *Manifestation and Motion,* Docket, Vol. I., pp. 473-479.
48 *Comment (On Petitioners' Motion to Admit Supplement Petition),* Docket, Vol. I, pp. 467-470.

demand letters.[49] On the same date, petitioners filed their *Reply to Comment dated August 25, 2020,* asserting that the demand letters mentioned pertains to the collection of the 40% tariff based on EO No. 23, s. 2017.[50]

On January 27, 2021, petitioners Velfram Foods Corporation and Premier Food Choice International Corporation filed their *Third Ex-Parte Motion to Withdraw As One of the Petitioners.*[51]

In a *Resolution* promulgated by the Court on February 8, 2021, the Court denied respondents' *Motion to Dismiss the Amended Petition* and admitted petitioners' *Supplemental Petition* and granted the *Third Ex-Parte Motion to Withdraw As One of the Petitioners.*[52]

On March 8, 2021, petitioners filed their *Formal Offer of Documentary Exhibits (For the issuance of a Temporary Restraining Order and/or Preliminary Injunction).*[53]

On March 15, 2021, petitioners filed a *Motion for the Issuance of Status Quo Order (Re: Post-Clearance Audit covering the period of March 5, 2019 to June 16, 2019, among others)* praying that respondent defer the conduct of the Post Clearance Audit covering the period March 5, 2019 to June 16, 2019.[54] On May 18, 2021, respondent filed an *Opposition (To Petitioners' Motion for Issuance of Status Quo Order).*[55]

On May 18, 2021, respondent filed an *Opposition (To Petitioners' Motion for Issuance of Status Quo Order),* stating among others, that the conduct of a Post Clearance Audit is sanctioned under Section 1000 of the CMTA[56] and that petitioners failed to establish a clear and

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49 *Comment on the Manifestation dated August 25, 2020,* Docket, Vol. I, pp. 417-420.

50 *Reply to Comment dated August 25, 2020,* Docket, Vol. I, pp. 422-424.

51 *Third Ex-Parte Motion to Withdraw As One of the Petitioners,* Docket, Vol. I, pp. 613-615.

52 *Resolution,* Docket, Vol. II, pp. 623-630.

53 *Formal Offer of Documentary Exhibits (For the issuance of a Temporary Restraining Order and/or Preliminary Injunction),* Docket, Vol. II, pp. 662-672.

54 *Motion for the Issuance of Status Quo Order (Re: Post-Clearance Audit covering the period of March 5, 2019 to June 16, 2019, among others),* Docket, Vol. II, pp. 684-692.

55 Docket, Vol. II, pp. 729-734.

56 CMTA (2016), Sec. 1000 provides: "*SEC. 1000. Audit and Examination of Records. – Within three (3) years from the date of final payment of duties and taxes or customs clearance, as the case may be, the Bureau may conduct an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall included statements, declarations, documents, and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the importer for duties, taxes and other charges, including any fine or penalty, to ensure compliance with this Act.*"

positive right which should be judicially protected.[57] On the same date, respondent filed respondent's *Comment/Answer* to petitioners' Amended and Supplemental Petitions.[58]

On June 14, 2021, petitioners filed their *Reply (With Leave to Respondent's Comment/Answer dated April 28, 2021).*[59]

On June 15, 2021, petitioners filed their *Comment (Re: Respondent's Opposition to Petitioners' Motion for Issuance of Status Quo Order dated April 28, 2021)*, arguing that before respondent can legally collect the differential rate of 35%, the issue on the constitutionality of CMC No. 131-2019 should be settled first.[60]

On June 29, 2021, the Court resolved that the following be stricken from the records: (1) petitioners' *Reply* be stricken from the records, under Section 10, Rule 6 of the Rules of Court, as amended, since respondent did not attach an actionable document in the *Comment/Answer;* and (2) petitioners' *Comment (Re: Respondent's Opposition to Petitioners' Motion for Issuance of Status Quo Order dated April 28, 2021)* for being a proscribed submission under Section 5 (c), Rule 15 of the Rules of Court, as amended. The Court denied petitioners' *Motion for Issuance of Status Quo Order* for failure of petitioners to allege any right that may be violated because of the Post Clearance Audit of the BOC.[61]

On September 10, 2021, petitioners filed their *Pre-Trial Brief,*[62] the *Judicial Affidavit* of Felix O. Tiukinhoy, Jr,[63] and the *Judicial Affidavit* of Maria Ermida Viñas.[64]

On September 16, 2021, the Pre-Trial Conference was held via videoconferencing. Counsel for petitioners confirmed upon clarification, that the present Petition was filed under Rule 65 of the Rules of Court, and is in the nature of a special civil action for Prohibition. The parties agreed that the resolution of the application

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57 *Opposition (To petitioners' Motion for Issuance of Status Quo Order)*, Docket, Vol. II, pp. 729-734.

58 *Comment / Answer*, Docket, Vol. II, pp. 737-761.

59 *Reply (With Leave to Respondent's Comment/Answer dated April 28, 2021)*, Docket, Vol. II, pp. 768-783.

60 *Comment (Re: Respondent's Opposition to Petitioners' Motion for Issuance of Status Quo Order dated April 28, 2021)*, Docket, Vol. II, pp. 787-791.

61 *Resolution*, Docket, Vol. II, pp. 820-829.

62 *Pre-Trial Brief*, Docket, Vol. II, pp. 1029-1036.

63 *Judicial Affidavit*, Docket, Vol. II, pp. 926-938.

64 *Judicial Affidavit*, Docket, Vol. II, pp. 1062-1073.

of the TRO and/or WPI shall be consolidated with the determination of the case on the merits. The Court ordered the parties to submit their respective Memoranda and ordered that the present case, together with the prayer for the issuance of a TRO and/or WPI, shall be deemed submitted for decision and resolution.[65]

On September 23, 2021, petitioner Food Crafters, Inc. filed a *Fourth Ex-Parte Motion to Withdraw As One of the Petitioners.*[66]

On October 8, 2021, respondent filed a *Motion to Exclude*, praying that the following Assessment Letters be excluded from the case given the withdrawal of the following parties from the case:[67]

Date	Importer	Amount (in ₱)
June 13, 2019	Velfram Foods Corp.	909,941.00
May 28, 2019	Century Pacific Food, Inc.	41,297,291.00
June 27, 2019	Premier Food Choice International Corporation	3,271,753.00
June 10, 2019	Frabelle Corp.	72,760,866.00
May 31, 2019	Food Crafters, Inc.	8,476,837.00
September 9, 2019	Century Pacific Food, Inc.	41,297,291.00
September 9, 2019	Premier Food Choice Corporation	3,271,753.00

On October 8, 2021, respondent filed respondent's *Pre-Trial Brief*[68] and *Memorandum.*[69] On October 22, 2021, petitioners filed their *Memorandum.*[70] On November 25, 2021, the case was deemed submitted for decision.

Issues

In the hearing held on September 16, 2021,[71] the parties adopted, as agreed upon, the following issues to be resolved by this Court:

1. Whether or not CMC No. 131-2019 is valid;

2. Whether or not the assessments issued by the District Collectors of Customs against petitioners are valid;

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65 *Order* dated September 16, 2021.

66 Rendered moot by the Order dated September 16, 2021, wherein the Court dropped Food Crafters Inc. as among petitioners in this case as manifested by counsel for petitioners (*Resolution*, Docket, Vol III., pp. 1555-1557).

67 *Motion to Exclude,* Docket, Vol. III, pp. 1456-1460.

68 *Pre-Trial Brief,* Docket, Vol. III., pp. 1463-1468.

69 *Memorandum,* Docket, Vol. III, pp. 1495-1523.

70 *Memorandum,* Docket, Vol. III, pp. 1526-1550.

71 *Order* dated September 16, 2021.

3. Whether or not the Amended and Supplemental Petitions for Review are fatally defective because they failed to implead the indispensable parties to this case;

4. Whether or not the issue on the validity of CMC No. 131-2019 has become moot and academic in view of its abrogation even before the filing of the original Petition; and

5. Whether or not the Honorable Court has jurisdiction to inquire into and rule upon the validity of the undisputed assessment letters issued by the Bureau of Customs District Collectors Atty. Erastus Sandino Austria and Guillermo Pedro Francia, IV.

Arguments of the Parties

Petitioners' Arguments

Petitioners aver the following in their Memorandum:

1. CMC No. 131-2019 requires publication since it was issued by respondent to implement the provision under EO No. 23, s. 2017, particularly Section 6 thereof, after the passage of RA No. 11203 and concurrently, that the demand letters were anchored on CMC No. 131-2019.

2. The demand letters issued by the District Collectors are invalid.

3. The Amended and Supplemental Petitions are not fatally defective. This Court can make a final determination as it is the BOC, as represented by the COC, who is the indispensable real party in this case.

4. The issue on the validity of CMC No. 131-2019 remains to be resolved by this Court. It is determinative of the tariff rate for the period covered by the Demand Letters issued by the BOC and of whether or not the importers incurred a deficiency in payment.

5. The Court has jurisdiction over the Petition as it may take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance.[72]

Respondent's Arguments

Respondent avers the following in its Memorandum:

1. CMC No. 131-2019 is valid because it is merely an office memorandum which does not require publication in a newspaper of general circulation for its validity.

2. The importation of the goods subject of the assessment letters issued by the BOC cannot be considered as terminated because the correct import duty has not yet been paid. Thus, the COC correctly issued the Assessment Letters under Section 429, in relation to Section 1106 of RA No. 10863.[73]

3. Petitioners' failure to implead the BOC District Collectors as parties to this case is fatal because it will render all actions of the Court void for want of authority to act, not only as to the absent parties but even as to those present.

4. There is no more actual case or controversy involving a conflict of legal rights or an assertion of opposite legal claims susceptible of judicial resolution insofar as CMC No. 131-2019 is concerned. In other words, the issue of the validity of CMC No. 131-2019 has become moot and academic.

5. Decisions or rulings of the Collector of Customs involving goods with valuation or other customs issues are not among the cases falling within the limited appellate jurisdiction of the Court as defined under Section 7 of RA No. 9282.[74]

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72 *Memorandum*, Docket, Vol. III, pp. 1526-1550.

73 CMTA (2016), Section 429 in relation to Section 1106.

74 *Memorandum*, Docket, Vol. III, pp. 1495-1523.

The Ruling of the Court

Non-exhaustion of administrative remedies

Petitioners seek to enjoin respondent from implementing the provisions of CMC No. 131-2019, particularly for importations for the period from March 5, 2019 to May 16, 2019, by filing a Petition for Prohibition under Rule 65 of the Rules of Court.

Rule 65 provides:

> Section 2. *Petition for Prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> ...

The remedies under Rule 65 will only lie if there is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law.[75] The plain, speedy and adequate remedy expressly provided by law is an appeal of CMC No. 131-2019 with the Secretary of Finance.[76]

Section 201 of the CMTA provides:

> SEC. 201. *Powers and Functions of the Commissioner.* - The Commissioner shall have the following powers and functions:

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75 *Association of International Shipping Lines, Inc. v. Secretary of Finance,* G.R. No. 222239, January 15, 2020; *Confederation for Unity, Recognition and Advancement of Government Employees, [COURAGE] represented by its National President Ferdinand Gaite, et. al. v. Florencio B. Abad, in his capacity as the Secretary of the Department of Budget and Management and Corazon J. Soliman, in her capacity as Secretary of the Department of Social Welfare and Development,* G.R. No. 213658, July 3, 2018.

76 *Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation,* G.R. No. 207843, July 15, 2015.

> (a) Exclusive and original jurisdiction, to interpret the provisions of this Act, in collaboration with other relevant government agencies, **subject to review by the Secretary of Finance;**[77]

In this case, petitioners did not file an appeal with the Secretary of Finance. Premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within the officer's jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[78]

In *COURAGE v. Florencio B. Abad, in his capacity as the Secretary of the Department of Budget and Management and Corazon J. Soliman, in her capacity as Secretary of the Department of Social Welfare and Development,*[79] the Supreme Court emphasized the importance of the rule on exhaustion of administrative remedies, to wit:

> The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

However, despite the procedural infirmity of the Petition that warrants its outright dismissal, the Court deems it prudent and crucial to take cognizance of the case. The Court avails itself of its judicial prerogative in order not to delay the disposition of the case

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77 Boldfacing supplied.

78 *Association of International Shipping Lines, Inc. v. Secretary of Finance,* G.R. No. 222239, January 15, 2020; *Confederation for Unity, Recognition and Advancement of Government Employees, [COURAGE] represented by its National President Ferdinand Gaite, et. al. v. Florencio B. Abad, in his capacity as the Secretary of the Department of Budget and Management and Corazon J. Soliman, in her capacity as Secretary of the Department of Social Welfare and Development,* G.R. No. 213658, July 3, 2018.

79 *Id.*

and to promote the vital interest of justice, as the Supreme Court has affirmed in the case of *COURAGE* citing *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*,[80] to wit:

> [I]t would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies...a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.*, **pure question of law**, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. **To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the like, issued by the CIR.** The position we now take is more in accord with latest jurisprudence.[81]

Considering that the issues raised in the Petition similarly involve pure questions of law,[82] this Court gives course to the Petition.[83]

Jurisdiction over Petitions for Prohibition

This Court has jurisdiction over challenges to the validity of tax issuances and has jurisdiction under Republic Act No. 1125 (RA 1125), as amended, otherwise known as An Act Creating the Court of Tax Appeals, to issue writs of prohibition in order to strike down tax issuances. In *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division) and Pilipinas Shell Petroleum Corporation*,[84] the Supreme Court citing *Banco de Oro v. Republic of the Philippines*[85] declares:

> This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases **directly challenging the constitutionality or validity of a tax law or regulation or**

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80 G.R. No. 212530, August 10, 2016.
81 Boldfacing supplied.
82 *Order* dated September 16, 2021.
83 *Metropolitan Waterworks and Sewerage System v. Central Board of Assessment Appeals*, G.R. No. 215955, January 13, 2021.
84 G.R. No. 210501, March 15, 2021.
85 G.R. No. 198756, August 16, 2016.

> **administrative issuance** (revenue orders, revenue memorandum circulars, rulings).
>
> 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.**
>
> Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, **actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**[86]

The Court's authority to issue writs of prohibition is inherent in the exercise of its appellate jurisdiction. The Supreme Court explains in the case of *City of Manila v. Hon. Grecia-Cuerdo,*[87] to wit:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of the jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

In *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.,*[88] a case wherein a revenue memorandum circular issued by the

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86 Boldfacing supplied.
87 G.R. No. 175723, February 4, 2014.
88 G.R. Nos. 215801 & 218924, January 15, 2020.

Bureau of Internal Revenue was challenged, the Supreme Court ruled that a petition for declaratory relief is not the proper remedy, but rather *certiorari* or prohibition, to wit:

> The Court rules that *certiorari* or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances. *DOTR v. PPTSA*[89] is apropos:
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> The Petition for Declaratory Relief is not the proper remedy.
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> ...
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> Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.
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> ...
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> To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."
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> There is grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions."

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89 G.R. No. 230107, July 24, 2018.

Court's power of judicial review to determine constitutionality of CMC No. 131-2019

The Court does not have unbridled authority to rule on every claim of constitutional violation.[90] This Court may only exercise its power of judicial review after determining the presence of all requisites, in consideration of the doctrine of separation of powers, *viz*: (a) there must be an actual case or controversy, (b) the petitioners must possess legal standing, (c) the question of constitutionality must be raised at the earliest opportunity, and (d) the issue of constitutionality must be the *lis mota* of the case.[91]

The Court finds the presence of the requisites for judicial review.

Actual case or controversy

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory,[92] lest the decision of the court would amount to an advisory opinion.[93]

At the time of filing of the Petition, the BOC had already implemented CMC No. 131-2019 through the issuance of Demand Letters by the District Collector and the updating of the BOC's E2M System of the duty rates. In the case of *Villafuerte, Jr. v. Robredo,*[94] the Supreme Court held that there is an actual controversy since the assailed memorandum circulars were already being implemented.

Furthermore, respondent's contention that the present case is mooted because CMC No. 131-2019 has been superseded by CMC No. 144-2019 is untenable. Such fact does not render the present case

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90 *Imbong v. Ochoa,* G.R. No. 204819, April 8, 2014 citing *Biraogo v. Philippine Truth Commission,* G.R. No. 192935, December 7, 2010 and *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010.

91 *Saguisag v. Ochoa,* G.R. No. 212426 & 212444, January 12, 2016.

92 *La Bugal-B'laan Tribal Association, Inc. v. Victor O. Ramos,* G.R. No. 127882, January 27, 2004 citing *Board of Optometry v. Hon. Angel B. Colet,* G.R. No. 122241, July 30, 1996.

93 *Id.* citing *Patricio Dumlao, Romeo B. Igot, and Alfredo Salapantan, Jr. v. Commission on Elections,* G.R. No. L-52245, January 22, 1980.

94 *Gov. Luis Raymund F. Villafuerte, Jr. and the Province of Camarines Sur v. Hon. Jesse M. Robredo, in his capacity as Secretary of the Department of the Interior and Local Government,* G.R. No. 195390, December 10, 2014.

moot considering that the BOC would pursue the collection of the assessed duties in the Demand Letters issued by District Collector Austria which were anchored on CMC No. 131-2019.[95]

Legal standing

Legal standing is a party's personal and substantial interest in a case such that has sustained or will sustain direct injury as result of the governmental act being challenged.[96]

In this case, the petitioners have legal standing since the BOC would pursue the collection of the assessed duties pursuant to CMC No. 131-2019.

Earliest opportunity

The question of constitutionality was raised by the petitioners at the earliest opportunity. *Province of Nueva Vizcaya v. CE Casecnan Water and Energy Co., Inc.,*[97] is instructive on the earliest opportunity to raise a constitutional issue, to wit:

> ...The earliest opportunity to raise a constitutional issue is in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before a competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.[98] Here, the competent court that should resolve the constitutionality of EO No. 173 is the CTA pursuant to *Banco De Oro v. Republic.*[99] Having been filed belatedly, the Court cannot consider the question of constitutionality in this late stage of the case.

Lis mota

Courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or *crux* of the controversy.[100] In the present case, the determination of the constitutionality and/or

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95 *Manifestation,* Docket, Vol. I, pp. 229-231.

96 *Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo, et. al.,* G.R. No. 160756, March 9, 2010.

97 *Province of Nueva Vizcaya v. CE Casecnan Water and Energy Co., Inc.,* G.R. No. 241302, February 1, 2021.

98 *Id.*

99 G.R. No. 241302, February 1, 2021 citing G.R. No. 198756 (Resolution), August 16, 2016.

100 *Francisco, Jr. v. House of Representatives,* G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160362, 160370, 160376, 160392, 160397, 160403, and 160405, November 10, 2003.

validity of CMC No. 131-2019 is necessary in the determination of real, earnest, and vital controversy between the parties, as the CMC is the basis for respondent's enforcement of the collection of the differential 35% duty rate.

Validity of MFN rates under CMC No. 131-2019

Special Treatment

In 1994, the Philippines joined the World Trade Organization (WTO) as a founding member. On December 14, 1994, the Philippine Senate adopted Resolution No. 97, which concurred to the ratification by the President of the Philippines of the *Agreement Establishing the World Trade Organization* (which includes Multilateral Agreements such as the *General Agreement on Tariffs and Trade* and the *Agreement on Agriculture[GATT]*).[101]

The purpose of the GATT was to make international trade easier by minimizing international restrictions by eliminating reduced quantities, tariffs and subsidies on the entry of agricultural and food products into the country.[102] Recognizing however that developing countries require more favorable treatment than developed countries, the WTO Agreements contain special treatment provisions which give developing countries special rights.[103]

For instance, Article XI of the GATT generally prohibits quantitative restrictions (QR) on the importation or the exportation of any product by stating that *"[n]o prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Member . . . ."*[104] Article 15 of the WTO *Agreement on Agriculture* however provides that developing member countries, such as the Philippines, have the flexibility to implement reduction commitments for up to ten (10) years and any extension to the *Special Treatment* may be negotiated.[105] Upon joining the WTO, the Philippines secured a *Special Treatment* for rice, which temporarily permitted the country to

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101 *Tañada, et al. v. Angara, et al.*, G.R. No. 118295, May 2, 1997.

102 *Id.*

103 *Id.*

104 Article XI, General Agreement on Tariffs and Trade 1994 (GATT) available at https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_oth.pdf.

105 Article XV, Agreement on Agriculture available at https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_art15_oth.pdf.

impose quantitative restrictions (QR) in the importation of rice which was set to expire on June 30, 2005.[106]

The Philippines applied for an extension of the QR on rice and was granted a seven (7)-year extension until June 30, 2012 by the WTO.[107] For the requested seven (7)-year extension, the Philippine government is mandated under Paragraph 9, Section B, Annex 5 of the WTO Agreement on Agriculture to compensate other WTO member countries by reducing the Most Favored Nation (MFN) rates of duty on certain agriculture products for the requested seven (7) year extension of the special treatment on rice.[108] Among the concessions was the reduction in tariffs for MDM, effective as of December 27, 2006, as set forth in the Rectification and Modification of Schedule LXXV - Philippines contained in the WTO documents G/MA/TAR/99/Rev.1 dated September 27, 2006 and WT/Let/562 on February 08, 2007.[109] Thus, on June 15, 2007, under EO No. 627, s. 2007, the Philippines reduced the tariff rate for MDM from 40% to 5%.[110] EO No. 627, s. 2007 was effective[111] as of June 28, 2007.[112]

Waiver

The *Special Treatment* expired on June 30, 2012 as scheduled.[113] However under WTO Decision on Waiver Relating to Special Treatment for Rice of the Philippines (Waiver) contained in WTO

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106 The Uruguay Round Schedule LXXV of the Philippines available at https://goods-schedules.wto.org/member/philippines.

107 Rectification and Modification of Schedule LXXV- Republic of the Philippines contained in the WTO documents G/MA/TAR/99/Rev.1, September 27, 2006 and WT/Let/562, February 08, 2007 available at https://goods-schedules.wto.org/member/philippines; EO No. 23, s. 2017, Whereas Clause.

108 Modifying the Nomenclature and Most-Favored Nation (MFN) Rates of Duty on Various Agricultural Products as Provided for Under the Tariff and Customs Code of 1978, as Amended, in Order to Implement the Philippine Commitment on Rice Under the World Trade organization (WTO) Agreement on Agriculture, Executive Order No. 627, June 15, 2007, https://www.officialgazette.gov.ph/2007/06/15/executive-order-no-627-s-2007/.

109 WTO Analytical Index, Agreement on Agriculture - Annex 5 (Practice) available at https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_ann5_oth.pdf.

110 As cited in EO No. 627, s.2007, "Section 402 of the Tariff and Customs Code of 1978, as amended, empowers the President to modify import duties for the promotion of foreign trade."

111 Section 5 of EO No. 627, s. 2007 provides: *"This Executive Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines."*

112 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 627, s. 2007 was published in The Manila Times on June 28, 2007.

113 See Whereas Clause, EO No. 23, s. 2017 citing WTO documents G/MA/TAR/RS/99/Rev.1 dated September 27, 2006 and WT/Let/562 dated February 8, 2007.

Document WT/L/42 dated July 24, 2014, [114] the *Special Treatment* was reinstated up to June 30, 2017.[115]

E.O. No. 190, s. 2015

Under EO No. 190, s. 2015, as a concession to the reinstatement of the QR on rice imports, the MFN tariff rate for MDM was reduced to 5% for the period of the extension [up to June 30, 2017].[116] EO No. 190, s. 2015 was effective[117] as of November 12, 2015.[118] CMC No. 163-2015 dated November 13, 2015 was issued for the guidance of the BOC with subject title *"Executive Order No. 190 / Modifying MFN Rates of Duty / Waiver to Special Treatment for Rice Of The Philippines."*

E.O. 23, s. 2017

The *Waiver* ceased as of July 1, 2017.[119] Under GATT, the tariff rates on certain agricultural products, including tariff for MDM, should have correspondingly reverted to the MFN Rate of 40%. However, following Section 1608 of RA No. 10863, which authorized the President, upon recommendation of NEDA to reduce existing protective rates of import duty, the President issued EO No. 23, s. 2017 on April 28, 2017,[120] approving the extension of the reduced rates of duty, which included the 5% MFN tariff rate for MDM. EO No. 23, s. 2017 was effective[121] as of May 24, 2017.[122] Under Section 3

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114 See Whereas Clause, EO No. 23 s. 2017; Whereas Clause, EO 190, s. 2015.

115 Decision on Waiver relating to Special Treatment for Rice of the Philippines (Waiver Decision of 24 July 2014 available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/932.pdf&Open=True.

116 As cited in EO No. 190, s.2015, *"Section 401 of the TCCP [Tariff and Customs Code of the Philippines], as amended, authorizes the President of the Philippines, upon the recommendation of [the] National Economic and Development Authority (NEDA), to modify import duties as required or as appropriate."*

117 Section 6 of EO No. 190, s. 2015 provides: *"SECTION 6. Effectivity. This Executive Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines."*

118 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 190, s. 2015 was published in The Manila Bulletin on November 12, 2015.

119 See Whereas Clause, EO No. 23, s. 2017 citing WTO documents G/MA/TAR/RS/99/Rev.1 dated September 27, 2006 and WT/Let/562 dated February 8, 2007.

120 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 190, s. 2015 was published in The Manila Bulletin on May 24, 2017 and was effective as of May 24, 2017.

121 Section 6 of EO No. 23, s. 2017 provides: *"This Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, and shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply."*

122 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 23, s. 2017 was published in The Manila Bulletin on May 24, 2017.

of the EO, the QR on rice was likewise reinstated for the same period of the reduced tariff rates.[123]

The effectivity clause in EO No. 23, s. 2017 is clear that the lower MFN rate of 5% shall be applicable until June 30, 2020, or until a law amending the provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first, to wit:

> SECTION 6. Effectivity. This Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, and **shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first,** after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply.[124]

RA No. 11203

On February 14, 2019, RA No. 11203[125] was enacted and amended some provisions of RA No. 8178 relating to rice tariffication. RA No. 11203 otherwise known as "An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes" took effect on March 5, 2019.[126] As the title of the law suggests, the QR on rice was effectively lifted. On May 23, 2019, Customs Commissioner Rey Leonardo B. Guerrero issued the assailed CMC No. 131-2019, which provides for the application of the higher MFN rate (40% for MDM) by virtue of the effectivity of RA No. 11203.

EO No. 82, s. 2019

On June 13, 2019, EO No. 82, s. 2019 was issued as the conditions then warranted the continued application of the reduced

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123 Extending the Effectivity of the Most-Favored-Nation Rates of Duty on Certain Agricultural Products under Republic Act No. 10863, Otherwise Known as the Customs Modernization and Tariff Act, and the other Philippine Commitments under the World Trade Organization Decision on Waiver Relating to Special Treatment for Rice of the Philippines, Executive Order No. 26, April 27, 2017, https://www.officialgazette.gov.ph/2017/04/28/executive-order-no-23-s-2017/.

124 Boldfacing supplied.

125 Rice Tariffication Law (2019).

126 The Rice Tariffication Law was uploaded in the Official Gazette on February 18, 2019. Sec. 20 of RA No. 11203 provides that the law shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

rate of duties on certain agricultural products to mitigate the impact of high prices of goods (5% MFN tariff rate MDM).[127] EO No. 82, s. 2019 was effective[128] as of June 13, 2019.[129]

As provided in Sections 3 and 6 of the EO, no retroactivity was imposed but rather a prospective application, to wit:

> SECTION 3. Levy on Articles. Upon the effectivity of this Order, all articles which are specifically listed in Annex A hereof and are entered into, or withdrawn from warehouses in the Philippines for consumption, shall be levied the MFN rates of duty as therein prescribed.
>
> ...
>
> SECTION 6. Effectivity. This Order shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation, and shall be applicable until 31 December 2020.

Statutes, including administrative rules and regulations have prospective application unless a retroactive application is manifested expressly, as in the case of *Republic of the Philippines v. Larrazabal*,[130] to wit:

> It is a well-entrenched principle that statues, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward).

Considering the foregoing, from March 5, 2019, the day RA No. 11203 was in effect, until June 12, 2019, the day before the issuance and effectivity of EO No. 82, s. 2019, the provisions of the GATT on

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127 Modifying the Nomenclature and Rates of Import Duty on Certain Agricultural products Under Section 1611 of Republic Act No. 10863, Otherwise Known As The Customs Modernization and Tariff Act, Executive Order No. 82, June 13, 2019, https://www.officialgazette.gov.ph/2019/06/13/executive-order-no-82-s-2019/.

128 Section 6 of EO No. 82, s. 2019 provides: *"This Order shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation, and shall be applicable until 31 December 2020."*

129 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 82, s. 2019 was published in The Manila Bulletin on June 13, 2019.

130 *Republic of the Philippines, represented by the Department of Public Works and Highways v. Potenciano A. Larrazabal, Sr., Victoria Larrzabal Locsin and Betty Larrazabal*, G.R. No. 204530, July 26, 2017.

the MFN rates (40% for MDM) were in effect, there being no other treaty obligation, law, or executive order during that period, that was enacted or in effect, to reduce the MFN rates (40% for MDM).

Petitioners' argument that there is nothing in EO No. 23, s. 2017 that provides that the subsequent enactment of a law amending RA No. 8178 shall automatically cause the imposition of the 40% rate[131] is misplaced. The same is true for petitioners' assertion that EO No. 23, s. 2017 does not authorize the COC to decide when to impose the said higher rate.[132]

To reiterate, the Philippine concession on the reduced 5% MFN tariff rate for MDM and the 40% MFN rate for MDM was pursuant to the WTO Agreement, including the Multilateral Trade Agreements (i.e., WTO Agreement on Agriculture), as concurred in by the Philippine Senate through Resolution No. 97.[133] In other words, without an application for Special Treatment[134] or a Waiver[135] or a law[136] or executive order,[137] exempting the Philippine Government from the provisions of GATT, the Philippines is bound to observe the prohibition on QR on rice and the MFN rates of 40% on MDM.

The WTO Agreement, including the Multilateral Trade Agreements (i.e., WTO Agreement on Agriculture), are part of the laws of the land and have the same force and effect as are other statutes, as decided by the Supreme Court in *Tañada v. Angara*.[138] The imposition of the MFN rates for MDM under EO No. 23, s. 2017 as echoed in CMC No. 131-2019, is a performance of the Philippine Government of its treaty obligations. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* - international agreements must be performed in good faith.[139] A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. A state which has contracted valid international obligations is bound to make in its legislation such

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131 *Amended Petition for Review*, Docket, Vol. I, p. 251.

132 *Id.*

133 *Tañada, et al. v. Angara, et al.*, GR No. 118295, May 2, 1997.

134 The Uruguay Round Schedule LXXV of the Philippines available at https://goods-schedules.wto.org/member/philippines.

135 Decision on Waiver relating to Special Treatment for Rice of the Philippines (Waiver Decision of 24 July 2014 available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/932.pdf&Open=True.

136 Rice Tariffication Law.

137 EO No. 190, s. 2015; EO No. 23, s. 2017; EO No. 82, s. 2019.

138 *Tañada, et al. v. Angara, et al.*, GR No. 118295, May 2, 1997.

139 *Id.*

modifications as may be necessary to ensure the fulfillment of the obligations undertaken.[140]

Hence for clarity, the following is a timeline of the periods showing the treaty or the executive orders covering the reduced 5% MFN tariff rate on MDM and QR on Rice, exempting the Philippine Government from the MFN rates. The timeline clearly shows that from March 5, 2019 to June 12, 2019, there was no treaty obligation, law, or executive order, exempting the Philippines from the 40% MFN rate or a reduction thereof that was in effect.

Periods	Treaty or EO
December 27, 2006 to June 30, 2012	The Philippines communicated a draft to the WTO containing modifications on the tariff schedules (including 5% on MDM) in relation to the **special treatment** on rice, with a view to extending special treatment for seven years, until June 30, 2012. The draft was approved by the WTO effective December 27, 2006 until June 30, 2012.[141]
June 28, 2007 to June 30, 2012	On June 15, 2007, under **EO No. 627, s. 2007**,[142] the Philippines reduced the tariff for MDM from 40% to 5%. EO No. 627, s. 2007 was effective[143] as of June 28, 2007.[144]

140 *Id.*

141 WTO Analytical Index, Agreement on Agriculture - Annex 5 (Practice) available at https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_ann5_oth.pdf.

142 EO No. 627, s. 2007 provides:

"WHEREAS, Annex 5 of the WTO Agreement on Agriculture, otherwise known as the "special treatment" provision, provides for restriction on imports of primary sensitive agricultural products subject to strictly defined conditions;

WHEREAS, the Philippine government applied for a seven (7) year extension of the Special Treatment on rice under Annex 5 of the World Trade Organization (WTO) Agreement on Agriculture until 2012;

WHEREAS, Paragraph 9, Section B, Annex 5 of the WTO Agreement on Agriculture mandates the Philippine government to compensate other WTO member countries by reducing the Most Favored Nation (MFN) rates of duty on certain agriculture products for the requested seven (7) year extension of the special treatment on rice;

WHEREAS, the modification and rectifications of Schedule LXXV of the Philippines took effect on 27 December 2006."

143 Section 5 of EO No. 627, s. 2007 provides: *"This Executive Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines."*

144 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 627, s. 2007 was published in The Manila Times on June 28, 2007.

July 25, 2014 to June 30, 2017	WTO Decision on **Waiver** Relating to Special Treatment for Rice of the Philippines (Waiver) contained in WTO Document WT/L/42 provides that the WTO obligations of the Philippines for rice shall be waived until June 30, 2017 and that the concessions under the waiver (including 5% MFN tariff rate on MDM) shall be terminated upon the expiration of the waiver.[145]
November 12, 2015 to June 30, 2017	Under **EO No. 190, s. 2015**, as a concession to the reinstatement of the QR on rice imports, the MFN rate for MDM was reduced to 5% for the period of the waiver (up to June 30, 2017).[146] EO No. 190, s. 2015 was effective[147] as of November 12, 2015.[148]
May 24, 2017 to March 4, 2019	Under **Executive Order EO No. 23,** s. **2017,** the reduced MFN rate of 5% for MDM was extended until June 30, 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first.[149] EO No. 23, s. 2017 was effective[150] as of May 24, 2017.[151]

145 Decision on Waiver relating to Special Treatment for Rice of the Philippines (Waiver Decision of 24 July 2014 available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/932.pdf&Open=True.

146 EO No. 190, s.2015 provides:

> *"WHEREAS, the Special treatment has been reinstated up to 30 June 2017 by virtue of the WTO Decision on Waiver Relating to Special Treatment for Rice of the Philippines ("Waiver") contained in WTO document WT/L/42 dated 24 July 2014;*
>
> *WHEREAS, paragraphs 2-8 of the Waiver also embody the terms and conditions including the concessions in rice contained in its "Annex A" and the other concessions to reduce the Most Favoured Nation (MFN) rates of duty on certain agricultural products;*
>
> ...
>
> *SECTION 2. Rates for Articles in Annexes A and B upon the Expiration of the Waiver. The concession entered by the Philippine government shall cease to exist upon the expiration of the Waiver. The MFN rattes of duty as provided for in Column 5 of Annexes A and B shall then apply."*

147 Section 6 of EO No. 190, s. 2015 provides: *"SECTION 6. Effectivity. This Executive Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines."*

148 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 190, s. 2015 was published in The Manila Bulletin on November 12, 2015.

149 EO No. 23, s. 2017.

150 Section 6 of EO No. 23, s. 2017 provides: *"This Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, and shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply."*

151 See https://tariffcommission.gov.ph/all-executive-orders which provides that EO No. 23, s. 2017 was published in The Manila Bulletin on May 24, 2017.

March 5, 2019 to June 12, 2019	Effective date of **RA No. 11203.**[152] **From March 5, 2019 to June 12, 2019, there was no treaty obligation, law, or executive order, exempting the Philippines from the 40% MFN rate or a reduction thereof that was in effect.**
June 13, 2019 to December 31, 2020	Under **EO No. 82, s. 2019,** the reduced MFN rate of 5% for MDM was imposed upon the effectivity of said EO. EO No. 82, s. 2019 was effective[153] as of June 13, 2019.

While this Court commiserates with petitioners, in the present case, the 35% differential tariff rates imposed by the COC from March 5, 2019 to May 16, 2019 was for the period when no law or executive order was in effect imposing the reduced 5% MFN tariff rate for MDM. The Court notes the prejudice to petitioners but the Court is bound to apply and give effect to applicable law and rules.[154]

In view of the foregoing, this Court finds no reason not to apply the provisions of CMC No. 131-2019, implementing EO No. 23, s. 2017. Being an administrative ruling, it is entitled to great respect by the courts.

CMC No. 131-2019 as an interpretative rule

Petitioners argue that respondent should have applied the pertinent provisions of Book VII, Chapter 2 of the Revised Administrative Code[155] relating to filing with the U.P. Law Center

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152 The Rice Tariffication Law was uploaded in the Official Gazette on February 18, 2019. Sec. 20 of RA No. 11203 provides that the law shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

153 Section 6 of EO No. 82, s. 2019 provides: *"This Order shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation, and shall be applicable until 31 December 2020."*

154 *Qatar Airways Company with Limited Liability v. Commissioner of Internal Revenue,* G.R. No. 238914, June 8, 2020.

155 Section 3. Filing. – (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules on force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the bases of any sanction against any party of persons.

...

Section 9. Public Participation. –

and publication of rules adopted by administrative agencies. Moreover, petitioners allege that considering respondent's failure to observe the rules under the Revised Administrative Code in relation to CMC No. 131-2019, it must be struck down for its violation of observing due process as enshrined in Article III, Section 1 of the Constitution.[156]

There are two (2) kinds of administrative issuances: (1) the legislative rule and the (2) the interpretative rule. A legislative rule is in the nature of subordinate legislation, designed to implement primary legislation. An interpretative rule is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[157]

Regulations that are interpretative and internal in nature do not require filing with the U.P. Law Center for their effectivity.[158] In *Association of International Shipping Lines, Inc. v. Secretary of Finance citing Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC) v. Energy Regulatory Commission (Astec),*[159] the Supreme Court held:

> ...Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in *Board of Trustees of the Government Service Insurance System v. Velasco,* this Court pronounced that **"[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.** Paragraph 9 (a) of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center states:

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(1) If not otherwise required by law, an agency shall, as far as practicable, publish or articulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed.

156 *Petition for Review,* Docket, Vol. I, pp. 22-23.

157 *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop,* G.R. No. 150947, July 15, 20013 citing *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary,* G.R. No. 108524, November 10, 1994.

158 *Association of International Shipping Lines, Inc. v. Secretary of Finance,* G.R. Mo. 222239, January 15, 2020.

159 G.R. No. 192117 dated September 18, 2012.

> 9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:
>
> a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public.[160]

The Supreme Court in *Astec* provides several exceptions to the requirement of publication, including the exception on interpretative regulations, as follows:

> Procedural due process demands that administrative rules and regulations be published in order to be effective.
>
> ...
>
> There are, however, several exceptions to the requirement of publication. First, **an interpretative regulation does not require publication in order to be effective.** The applicability of an interpretative regulation "needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed." Second, **a regulation that is merely internal in nature does not require publication for its effectivity.** It seeks to regulate only the personnel of the administrative agency and not the general public.[161] Third, a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties does not require publication in order to be effective.[162]

When an administrative rule is interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law has already prescribed. If the administrative rule goes beyond merely providing for the means that can facilitate the implementation of the law but substantially increases the burden of those governed, the agency concerned is required to give to those directly affected a chance to be heard, and to be duly informed, before the new issuance is given the force and effect of law.[163]

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160 Boldfacing supplied.

161 *Supra* note 161.

162 Boldfacing supplied.

163 *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop*, G.R. No. 150947 dated July 15, 2013.

In the case at bar, CMC No. 131-2019 is addressed to the personnel of the BOC: Deputy Commissioners, Service Directors, District / Port Collectors, and all others concerned. CMC No. 131-2019 was issued to inform and guide the addressees regarding the updated duty rates in the BOC's E2M System and in the Philippine Tariff Finder pursuant to EO No. 23, s.2017. It provided an instruction to confirm dissemination – *"for records purposes, please confirm the dissemination of the Circular throughout your offices within fifteen (15) days from receipt thereof."* Clearly, CMC No. 131 gives no real consequence more than what EO No. 23, s.2017 has already prescribed. It is internal in nature and is issued to serve as a guideline for BOC personnel.

As CMC No. 131-2019 is an interpretative rule, the three inquiries that the Court is free to make in case of a legislative rule, *viz*: (1) whether the rule is within the delegated authority of the administrative agency; (2) whether it is reasonable; and (3) whether it was issued pursuant to proper procedure,[164] are of no moment. Thus, petitioners' allegations that respondent cannot arrogate to itself the powers reserved to the President under the Flexible Tariff Clause[165] and assuming that said power may be delegated, it is an undue delegation of power,[166] are unavailing.

In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. The court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule.[167] The courts will not permit administrative issuances that override the law it seeks to apply and implement.[168]

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164 *Commissioner of Customs and District Collector of the Port of Subic v. Hypermix Feeds Corporation*, GR No. 179579, February 1, 2012 citing *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary* GR No. 108524 dated November 10, 1994.

165 CMTA (2016), Section 1608.

166 *Petition for Review*, Docket, Vol. I, pp. 23-27.

167 *Association of Non-Profit Clubs, Inc. (ANPC), herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, v. Bureau of Internal Revenue (BIR), herein represented by Hon. Commissioner Kim S. Jacinto-Henares*, G.R. No. 228539, June 26, 2019 as cited in *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994.

168 *Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE], represented by its National President Ferdinand Gaite, et. al. v. Florencio B. Abad, in his capacity as the Secretary of the Department of Budget and Management and Corazon J. Soliman, in her capacity as Secretary of the Department of Social Welfare and Development, G.R. No. 213658, July 3, 2018.*

Conversely, if the administrative rule conforms with the law sought to be implemented, the validity of the issuance must be upheld, as in the *COURAGE case*,[169] to wit:

> As earlier stated, Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. The courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement. Thus, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court upheld the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal Revenue because it was contrary to the express provision of Section 230 of the NIRC of 1977.
>
> Also, in *Banco de Oro v. Republic*, the Court nullified BIR Ruling Nos. 370-2011 and DA 378-2011 because they completely disregarded the 20 or more-lender rule added by Congress in the NIRC of 1997, as amended, and created a distinction for government debt instruments as against those issued by private corporations when there was none in the law.
>
> Conversely, if the assailed administrative rule conforms with the law sought to be implemented, the validity of said issuance must be upheld. Thus, in *The Philippine American Life and General Insurance Co. v. Secretary of Finance*, the Court declared valid Section 7 (c.2.2) of RR No. 06-08 and RMC No. 25-11, because they merely echoed Section 100 of the NIRC that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift; thus, subject to donor's tax.

This Court finds that CMC No. 131-2019 does not override EO No. 23, s. 2017. It is consistent and in harmony with EO No. 23, s. 2017, which it seeks to apply and implement. It merely echoed the MFN rates in the EO and applied the effectivity clause therein.

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169 *Id.*

Validity of the assessment letters/demand letters issued by the District Collectors

An indispensable party is one who has a direct interest in the litigation; and if this interest is such that it cannot be separated from that of the parties to the suit, or if the court cannot render justice between the parties in the party's absence, or if the decree will have an injurious effect upon the party's interest, or if the final determination of the controversy in the party's absence will be inconsistent with equity and good conscience.[170]

There are two (2) essential tests of an indispensable party: (1) if relief can be afforded petitioner without the presence of the other party and (2) if the case can be decided on its merits without prejudicing the rights of the other party. There is, however, no fixed formula for determining who is an indispensable party. It can only be determined in the context and by the facts of the case.[171]

In *Republic v. Sandiganbayan*,[172] the Supreme Court ruled that in case of failure to implead an indispensable party, the judgment of the court is not binding on the non-joined party, to wit:

> Generally, an indispensable party must be impleaded for the complete determination of the suit. However, failure to join an indispensable party does not divest the court of jurisdiction since the rule regarding indispensable parties is founded on equitable considerations and is not jurisdictional. Thus, the court is not divested of its power to render a decision even in the absence of indispensable parties, **though such judgment is not binding on the non-joined party.**[173]

In the present case, petitioners pray that the enforcement of the payment of the differential rate of 35% from March 5, 2019 up to May 16, 2019 and the imposition of the corresponding surcharges and interest as stated in the Demand Letters until the final resolution of the case be enjoined and that the Demand Letters issued by the District Collector be declared null and void for being ultra vires and for violating the Constitution and pertinent laws.

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170 *Republic of the Philippines v. Sandiganbayan*, G.R. No. 152154, July 15, 2003.
171 *Id.*
172 *Id.*
173 Boldfacing supplied.

Judgments do not bind strangers to the suit. The absence of an indispensable party renders all subsequent actions of the court null and void. The court would have no authority to act, not only as to the absent party, but as to those present as well.[174]

No final ruling can be had on the validity of the assessment letters/demand letters since the inclusion of the District Collector is indispensable for the effective and complete resolution of the case and in order to accord all parties the benefit of due process and fair play.

TRO / Writ of Preliminary Injunction

Petitioners pray that a TRO/WPI be issued to enjoin respondent from: (1) enforcing its demand for the payment of the differential rate of 35% from March 5, 2019 up to May 16, 2019; and (2) imposing the corresponding surcharges and interests as stated in the Demand Letters until final resolution of the case.[175]

According to petitioners, their clear right over the relief sought is based on the protection afforded by the Constitution against deprivation of property without due process of law. Petitioners add that the imposition of the 40% duty rate threatens the jobs of thousands of employees and that it will sap the resources of the meat importers, leaving them with no other choice but to pass on the additional burden to the consumers. [176]

The Court is not persuaded.

For a TRO/WPI to be issued, the following must be proven: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[177]

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174 *Valdez-Tallorin v. Heirs of Tarona,* G.R. No. 177429, November 24, 2009 citing *Moldes v. Villanueva,* G.R. No. 161955, August 31, 2005.

175 *Amended Petition for Review,* Docket, Vol. I, p. 257.

176 *Id.* at p. 256.

177 *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division),* G.R. Nos. 210501, 211294 & 212490, March 15, 2021 citing *Australian Professional realty, Inc. v. Municipality of Padre Garcia, Batangas Province,* G.R. No. 183367, March 14, 2012.

When the injunctive relief sought is to forestall the implementation of a statute or issuance, the applicant bears the burden of overcoming the presumption of validity inhering in such laws or issuances.[178] Considering the validity of CMC No. 131-2019, which is hinged upon EO No. 23, s. 2017 and the GATT, petitioners have not shown a clear and unmistakable right to be protected to warrant the issuance of a TRO/WPI. The injury sought to be protected is prospective in nature.[179]

WHEREFORE, in light of the foregoing considerations, the instant Petition is **DENIED** for lack of merit. The application for the issuance of TRO and/or Writ of Preliminary Injunction is hereby **DENIED.**

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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178 *Id.* citing *Executive Secretary v. Forerunner Multi Resources, Inc.*, G.R. No. 199234, January 7, 2013.

179 *Hon. Eduardo Ermita v. Hon. Jenny Lind R. Aldecoa-Delorino*, G.R. No. 177130, June 7, 2011.

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