REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

VICTOR R. DEL ROSARIO RICE MILL CORPORATION,
Petitioner,

CTA CASE NO. 10082

- versus -

Members:

BACORRO-VILLENA, *Acting Chairperson*
CUI-DAVID, *JJ.*

HON. REY LEONARDO B. GUERRERO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF CUSTOMS, ATTY. ERASTUS SANDINO AUSTRIA, IN HIS OFFICIAL CAPACITY AS DISTRICT COLLECTOR, MANILA INTERNATIONAL CONTAINER PORT, AND THE BUREAU OF CUSTOMS,
Respondents.

Promulgated:
JUN 28 2022
4:30 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review[1] filed by Victor R. del Rosario Rice Mill Corporation (**petitioner/VRDRRMC**) against Hon. Rey Leonardo B. Guerrero, in his official capacity as Commissioner of

[1] Filed on 21 May 2019, Division Docket, Volume I, pp. 20-282, with annexes.

Customs (**Customs Commissioner Guerrero**), Atty. Erastus Sandino Austria, in his official capacity as District Collector at the Manila International Container Port (**MICP District Collector Austria**), and the Bureau of Customs (**BOC**) (collectively, **respondents**) under Section 3(a)[2], Rule 8 in relation to Section 3(a)(4)[3], Rule 4 of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Petitioner seeks the reversal and setting aside of the following:

(1) Customs Commissioner Guerrero's Consolidated Order dated 01 April 2019[4] (**assailed Consolidated Order**), which affirmed MICP District Collector Austria's Order dated 27 February 2019[5] in Abandonment Proceeding (**AP**) Nos. 262-2018, 090-2019, 092-2019, 103-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019, 255-2018, and 244-2018 (VRDRRMC, as consignee), declaring as abandoned petitioner VRDRRMC's rice shipments imported from Thailand and Vietnam under the 2017-2018 Minimum Access Volume (**MAV**) Rice Importation Program of the National Food Authority (**NFA**); and,

(2) Customs Commissioner Guerrero's Resolution dated 02 May 2019[6] (**assailed Resolution**) in AP Nos. 262-2018, 090-2019, 092-2019, 103-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019, 255-2018, and 244-2018, (VRDRRMC, consignee), approving MICP District Collector Austria's request to auction the subject rice shipments.

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2 **SEC. 3**. *Who may appeal; period to file petition.* — (a) A party adversely affected ... by a decision or ruling of the Commissioner of Customs, ... may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

3 **SEC. 3**. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

...

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

4 Exhibit "P-19", BOC Records, Folder 2, pp. 724-739.

5 Exhibit "P-71", id., pp. 710-723.

6 Exhibit "P-20", id., pp. 627-659.

PARTIES OF THE CASE

Petitioner VRDRRMC is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business at Kilometer 101, National Highway San Leonardo, Nueva Ecija.[7]

On the other hand, respondents Customs Commissioner Guerrero and MICP District Collector Austria, both in their official capacities, and the BOC, are collectively tasked with exercising customs powers, duties and functions, and implementing customs laws, particularly, Sections 201[8], 202[9] and 210[10] of Republic Act (**RA**) No. 10863 or the Customs Modernization and Tariff Act of 2016 (**CMTA**).

Respondents Customs Commissioner Guerrero and the BOC may be served with pleadings, motions, orders, notices and other processes of this Court at the Office of the Commissioner, Ground Floor, OCOM Building, 16th Street, South Harbor, Port Area, Manila, or the Office of the Solicitor General (**OSG**) at 134 Amorsolo Street, Legaspi Village, Makati City.

Respondent MICP District Collector Austria may be served with pleadings, motions, orders, notices and other processes of this Court at the MICP, MICT S Access Road, Del Pan, Manila or the OSG at 134 Amorsolo Street, Legaspi Village, Makati City.

ADMINISTRATIVE PROCEEDINGS

Pursuant to its allocation under the 2017-2018 MAV Rice Importation Program of the NFA, petitioner imported rice under various Bills of Lading (**BLs**).[11] It imported rice from Thailand, Vietnam and Pakistan from February to September 2018, detailed as follows:

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7 Par. 2, II. Parties, Petition for Review, supra at note 1, p. 26.
8 **SEC. 201**. *Powers and Functions of the Commissioner.*
9 **SEC. 202**. *Functions of the Bureau.*
10 **SEC. 210**. *Duties of the District Collector.*
11 Par. 1, I. Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume III, p. 1029.

Shipment No.	Quantity	Commodity Specification	BL No.	Exhibit No.
1	520 MT	Vietnam White Rice, 5% Broken	ONEYSGNU83956600	"P-30"[12]
2	620 MT	Vietnam White Rice, 5% Broken	ASC0185360	"P-33"[13]
3	1820 MT	Thailand White Rice, 5% New Crop 2018	HDMUBKML0975915	"P-36"[14]
4	520 MT	Vietnam White Rice, 5% Broken	ONEYSGNU77223300	"P-39"[15]
5	500 MT	Thailand White Rice, 5% Broken	EGLV050800801314	"P-42"[16]
6	1040 MT	Thailand White Rice, 5% New Crop 2018	HDMUBKML0975857	"P-45"[17]
7	500 MT	Thailand White Rice	EGLV050800911462	"P-48"[18]
8	500 MT	Thailand White Rice, 5% Broken	EGLV050800911454	"P-51"[19]
9	651.25 MT	Thailand White Rice, 5% New Crop 2018	COAU7130774950	"P-54"[20]
10	500 MT	Thailand White Rice, 5% Broken	EGLV050800911471	"P-57"[21]
11	780 MT	Vietnam White Rice, 5% Broken	ONEYSGNU77907500	"P-60"[22]
12	501.20 MT	Pakistan IRRI-6 White Rice, 5% Double Silky Polish and Sortexed Crop	550810057348	"P-63"[23]
13	442 MT	Pakistan IRRI-6 White Rice, 5% Double Silky Polish and Sortexed Crop	CAOU7205325320	"P-66"[24]
14	660 MT	Vietnam White Rice, 5% Broken	SGNCB18011703	"P-68"[25]

Petitioner then applied for the corresponding Import Permits with the NFA for the above-listed shipments. As a pre-requisite to the issuance of Import Permits from the NFA, advance payment of customs duties must be made. Petitioner thus issued the following Debit Advices as payment for the tentative assessment of customs duties for the total allocation granted by the NFA:

(1) On 27 July 2018, petitioner issued a Debit Advice to the Land Bank of the Philippines (**LandBank**) Cash Plaza Branch in the amount of ₱350,929,225.00, authorizing the latter to debit

12 BOC Records, Folder 3, pp. 412-413.
13 Id., pp. 433-435.
14 Id., Folder 4, pp. 283-287.
15 Id., pp. 262-263.
16 Id., pp. 243-244.
17 Id., pp. 220-221.
18 Id., pp. 196-197.
19 Id., pp. 175-176.
20 Denied admission for failure to present the original for comparison and for failure to identity *per* Resolution dated 29 September 2020, Division Docket, Volume III, pp. 1352-1353.
21 BOC Records, Folder 5, pp. 134-135.
22 Id., pp. 112-113.
23 Denied admission for failure of the exhibit formally offered to correspond with the document actually marked *per* Resolution dated 29 September 2020, supra at note 20.
24 Division Docket, Volume II, p. 540.
25 Denied admission for failure to present the original for comparison and for failure to identity *per* Resolution dated 29 September 2020, supra at note 20.

petitioner's account for the payment of the final assessed customs duties[26]; and,

(2) With respect to BL Nos. 550810057348 and CAOU7205325320, petitioner issued a Debit Advice to LandBank as early as 09 January 2018 in the amount of ₱41,324,794.00, authorizing the latter to debit petitioner's account for the payment of the final assessed customs duties.[27]

As testified to by the Department Manager of LandBank Cabanatuan Maharlika Highway Branch (where petitioner maintains a bank account), Imelda G. Eusebio (**Eusebio**), petitioner authorized the transfer of the amounts ₱350,929,225.00 and ₱41,324,794.00 under Debit Advices dated 27 July 2018 and 09 January 2018, respectively, and has made such amounts available as payment of customs duties.[28] Relatedly, the Import/Export Document Specialist at the International Trade Department of LandBank's Head Office, Hanah Curina R. Rumbaoa (**Rumbaoa**), likewise testified that the aforesaid amounts have already been debited from petitioner's account and credited to respondent BOC's account as follows:[29]

(1) From the ₱350,929,225.00 advance payment *per* NFA MAV with Reference No. MAV-2018-COE-123, a total of ₱283,386,825.00 was applied and remitted to the BOC through the Bureau of Treasury (**BTr**) from August 2018 to April 2019; and,

(2) From the ₱41,324,794.00 advance payment *per* NFA MAV with Reference No. MAV-2017-COE-257, a total of ₱27,969,220.00 was applied and remitted to the BOC through the BTr from January 2018 to August 2018.

The NFA, however, belatedly issued the Import Permits only on the following dates:

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26 Exhibit "P-28", Division Docket, Volume III, p. 1237.

27 Exhibit "P-29", id., p. 1238.

28 Exhibit "P-90", Judicial Affidavit of Imelda G. Eusebio dated 24 February 2020, id., pp. 1219-1229, with photocopies of Exhibits "P-28" and "P-29".

29 Exhibit "P-91", Judicial Affidavit of Hanah Curina R. Rumbaoa dated 28 February 2020, id., pp. 1230-1238, with photocopies of Exhibits "P-28" and "P-29".

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Shipment No.	Import Permit No.	Date Issued	Name of Supplier	Commodity Specification	Quantity	Value	BL No.	Arrival Date	Exh N
1	MAV-2018-0519	21-Sep-2018	Everwell Pte., Ltd.	Vietnam White Rice, 5% Broken	520 MT	$178,360.00	ONEYSGNU839 56600	21-Sep-2018	"P-3
2	MAV-2018-0456	14-Sep-2018	Orient Rice Co. Ltd.	Vietnam White Rice, 5% Broken	620 MT	$229,400.00	ASC0185360	16-Sep-2018	"P-3
3	MAV-2018-0457	18-Sep-2018	Cal Intertrade Co., Ltd.	Thailand White Rice, 5% Broken	1820 MT	$624,260.00	HDMUBKML09 75915	18-Sep-2018	"P-3
4	MAV-2018-0520	21-Sep-2018	Everwell Pte., Ltd.	Vietnam White Rice, 5% Broken	520 MT	$178,360.00	ONEYSGNU772 23300	21-Sep-2018	"P-4
5	MAV-2018-0547	25-Sep-2018	Thai Hua (2511) Co., Ltd.	Thailand White Rice, 5% Broken	500 MT	$181,500.00	EGLV050800801 314	25-Sep-2018	"P-4
6	MAV-2018-0458	19-Sep-2018	Cal Intertrade Co., Ltd.	Thailand White Rice, 5% Broken	1040 MT	$356,720.00	HDMUBKML09 75857	19-Sep-2018	"P-4
7	MAV-2018-0551	25-Sep-2018	Thai Hua (2511) Co., Ltd.	Thailand White Rice, 5% Broken	500 MT	$181,500.00	EGLV050800911 462	26-Sep-2018	"P-4
8	MAV-2018-0548	25-Sep-2018	Thai Hua (2511) Co., Ltd.	Thailand White Rice, 5% Broken	500 MT	$181,500.00	EGLV050800911 454	25-Sep-2018	"P-5
9	MAV-2018-0455	14-Sep-2018	Cal Intertrade Co., Ltd.	Thailand White Rice, 5% Broken	651.25 MT	$223,378.75	COAU713077495 0	15-Sep-2018	"P-5
10	MAV-2018-0549	25-Sep-2018	Thai Hua (2511) Co., Ltd.	Thailand White Rice, 5% Broken	500 MT	$181,500.00	EGLV050800911 471	25-Sep-2018	"P-5
11	MAV-2018-0518	21-Sep-2018	Everwell Pte., Ltd.	Vietnam White Rice, 5% Broken	780 MT	$267,540.00	ONEYSGNU779 07500	21-Sep-2018	"P-6
12	MAV-2017-01076	05-Sep-2018	Hassan Ali Rice Export Company	Pakistan IRRI-6 White Rice, 5% Broken	500 MT	$192,000.00	550810057348	07-Sep-2018	"P-6
13	MAV-2017-0707	15-Feb-2018	Hassan Ali Rice Export Company	Pakistan IRRI-6 White Rice, 5% Broken, Double Silky Polish & Sortexed Crop 2017	442 MT	$154,700.00	CAOU720532532 0	18-Feb-2018	"P-6
14	MAV-2018-0553	21-Sep-2018	Intimex Group	Vietnam White Rice, 5% Broken	660 MT	$226,380.00	SGNCB18011703	23- Sep-2018	"P-6

Thereafter, petitioner filed the corresponding goods declaration/import entries for the above-listed shipments on 20 March 2018, 17 September 2018, 30 September 2018 and 15 October 2018, except for Shipment No. 8 covered by BL No. HDMUBKML0975857.[44]

30 BOC Records, Folder 3, p. 414.
31 Id., p. 436.
32 Id., Folder 4, p. 288.
33 Id., p. 264.
34 Id., p. 245.
35 Id., p. 222.
36 Id., p. 198.
37 Id., p. 177.
38 Id., p. 156.
39 BOC Records, Folder 5, p. 136.
40 Id., p. 114.
41 Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20; Same as Annex "P-41" attached to the Petition for Review, supra at note 1, p. 182.
42 Denied admission for failure to present the original for comparison and for failure to identity *per* Resolution dated 29 September 2020, supra at note 20; Same as Annex "P-44" attached to the Petition for Review, supra at note 1, p. 186.
43 Denied admission for failure to present the original for comparison and for failure to identity *per* Resolution dated 29 September 2020, supra at note 20; Same as Annex "P-46" attached to the Petition for Review, supra at note 1, p. 189.
44 Supra at note 11.

On 12 January 2019, respondents MICP District Collector and the BOC, through its Customs Operations Officer, Ma. Phililia Emilina L. Palaganas (**COO Palaganas**) sent a "Notice to Pay"[45] to petitioner *via* its official email address registered with respondent BOC-MICP, vdrm corp@yahoo.com, at 3:34 p.m. (from respondent BOC-MICP's official email address, micp@customs.gov.ph, at 7:34 a.m. on even date[46]). Nevertheless, petitioner still claims that it never received said "Notice to Pay" as allegedly there is no evidence on record that respondents successfully sent it.

The subject "Notice to Pay"[47] states the above-listed shipments, included in the "Inventory of Assessed but not yet paid shipments for a [the] period of June to December 15, 2018", were recommended for issuance of an Order of Abandonment since, despite the lapse of the reglementary period of fifteen (15) days within which to pay the computed duties, taxes and other charges due from the date of assessment, no such payment has been made. In the "Notice to Pay", petitioner was directed to pay the corresponding duties immediately, otherwise the shipment shall be deemed abandoned pursuant to Section 1129(c)[48] of the CMTA, detailed below:

Entry No.	Registry Date	Assessment Date	Unpaid Taxes
C74891	20 March 2018	10 August 2018	₱3,239,051.00
C251482	17 September 2018	18 September 2018	4,196,280.00
C251192	17 September 2018	18 September 2018	4,048,433.00
C285652	17 October 2018	21 November 2018	6,461,403.00
C266334	30 September 2018	30 September 2018	5,721,943.00
C266308	30 September 2018	30 September 2018	4,569,121.00
C266328	30 September 2018	30 September 2018	4,399,201.00
C266333	30 September 2018	30 September 2018	6,853,049.00

45 Exhibit "R-17", Division Docket, Volume IV, p. 1512.

46 Exhibit "P-70", id., BOC Records, Folder 3, p. 425.

47 Supra at note 45.

48 **SEC. 1129.** *Abandonment, Kinds and Effects of.* — Imported goods are deemed abandoned under any of the following circumstances:

...

(c) **Having filed such goods declaration, the owner, importer, consignee or interested party after due notice, fails to pay the assessed duties, taxes and other charges thereon**, or, if the regulated goods failed to comply with Section 117 of this Act, **within fifteen (15) days from the date of final assessment**: *Provided,* That if such regulated goods are subject of an alert order and the assessed duties, taxes and other charges thereof are not paid within fifteen (15) days from notification by the Bureau of the resolution of the alert order, **the same shall also be deemed abandoned**[.] (Emphasis supplied.)

Entry No.	Registry Date	Assessment Date	Unpaid Taxes
C266321	30 September 2018	30 September 2018	15,988,762.00
C266339	30 September 2018	30 September 2018	4,399,201.00
C266315	30 September 2018	30 September 2018	4,415,742.00
C266313	30 September 2018	30 September 2018	4,569,121.00
C266322	30 September 2018	30 September 2018	4,399,201.00
C266303	30 September 2018	30 September 2018	5,454,312.00
Total			**₱78,714,820.00**

On 14 January 2019, two (2) days after the alleged date of sending the aforesaid "Notice to Pay", respondent's MICP District Collector issued Decrees of Abandonment[49] and petitioner claims that the same were issued without any notice of the abandonment proceedings.[50]

In the said Decrees of Abandonment[51], respondent's MICP District Collector uniformly declared that: (1) BOC-MICP-Administrative Division sent a Notice to Pay/Claim *via* email to petitioner (as consignee); and, (2) there was implied abandonment due to petitioner's non-payment of customs duties, taxes and other charges under Section 1129(c)[52] of the CMTA. Pertinent details of the said Decrees of Abandonment are summarized below:

Abandoned Shipment No.	Entry No.	Entry Date	BL No.	Arrival Date	AP No.	Decree/ Order Date	Exhibit No.
1	C-266313-18	30-Sep-18	ONEYSGNU83956600	23-Sep-2018	090-2019	14-Jan-2019	"R-20"[53]
2	C-266303-18	30-Sep-18	ASC0185360	20-Sep-2018	092-2019	14-Jan-2019	"R-21"[54]
3	C-266321-18	30-Sep-18	HDMUBKML0975915	17-Sep-2018	103-2019	14-Jan-2019	"R-22"[55]
4	C-266308-18	30-Sep-18	ONEYSGNU77223300	25-Sep-2018	087-2019	14-Jan-2019	"R-23"[56]
5	C-266315-18	30-Sep-18	EGLV050800801314	27-Sep-2018	089-2019	14-Jan-2019	"R-24"[57]
6	C-251482-18	17-Sep-18	HDMUBKML0975857	19-Sep-2018	113-2019	28-Jan-2019	"R-33"[58]
7	C-266322-18	30-Sep-18	EGLV050800911462	26-Sep-2018	094-2019	14-Jan-2019	"R-25"[59]

49 Exhibits "R-19" to "R-33", id., Volume IV, pp. 1514-1558.

50 Par. 3.7, Part III (Statement of Facts and Antecedent Proceedings), Petition for Review, supra at note 1, p. 40; Par. 1.9, Statement of the Relevant Facts and Antecedent Proceedings, Petitioner's Memorandum dated 08 April 2021, id., p. 1674.

51 Supra at note 49.

52 Supra at note 48.

53 Division Docket, Volume IV, pp. 1522-1523.

54 Id., pp. 1524-1525.

55 Id., pp. 1526-1527.

56 Id., pp. 1528-1529.

57 Id., pp. 1530-1531.

58 Id., pp. 1557-1558.

59 Id., pp. 1532-1533.

Abandoned Shipment No.	Entry No.	Entry Date	BL No.	Arrival Date	AP No.	Decree/ Order Date	Exhibit No.
8	C-266339-18	30-Sep-18	EGLV050800911454	06-Sep-2018	091-2019	14-Jan-2019	"R-26"[60]
9	C-266334-18	30-Sep-18	COAU7130774950	13-Sep-2018	086-2019	14-Jan-2019	"R-27"[61]
10	C-266328-18	30-Sep-18	EGLV050800911471	27-Sep-2018	088-2019	14-Jan-2019	"R-28"[62]
11	C-266333-18	30-Sep-18	ONEYSGNU77907500	23-Sep-2018	093-2019	14-Jan-2019	"R-29"[63]
12	C-251192-18	17-Sep-18	550810057348	08-Sep-2018	255-2018	12-Oct-2018 & 26-Oct-2018	"R-30"[64]
13	C-74891-18	20-Mar-18	CAOU7205325320	17-Ma-2018	244-2018	10-Oct-2018 & 26-Oct-2018	"R-31"[65]
14	C-285673-18	17-Oct-18	SGNCB18011703	25-Sep-2018	116-2019	29-Jan-2019	"R-32"[66]

On 24 January 2019, petitioner only found out about the Decrees of Abandonment[67] when it followed-up with the BOC for the release of the subject shipments and received copies thereof, through Wally C. Maniego (**Maniego**), the representative of petitioner's licensed brokers.[68] Maniego likewise testified that neither their office nor that of petitioner received any notice prior to the issuance of the said Decrees of Abandonment.[69] However, petitioner alleged that, while the Decrees of Abandonment state that printout copies of the Notices to Pay/Claim (sent *via* email to petitioner) were attached therein, Maniego received copies of the said Decrees of Abandonment without any attachments.[70]

On 24 January 2019, petitioner filed its Letter-Appeal dated 23 January 2019[71] with respondent MICP District Collector Austria, informing the latter that it has no intention to abandon the above-listed shipments. Petitioner also filed Motions to Set Aside/Recall the

60 Id., pp. 1534-1535.
61 Id., pp. 1536-1537.
62 Id., pp. 1538-1539.
63 Id., pp. 1540-1541.
64 Id., pp. 1542-1547; This is not a Decree of Abandonment but are mere Orders dated 12 October 2018 and 26 October 2018 issued by respondent Manila International Container Port (MICP) District Collector in Abandonment Proceeding (AP) No. 255-2018.
65 Id., pp. 1548-1554; This is not a Decree of Abandonment but are mere Orders dated 10 October 2018 and 26 October 2018 issued by respondent MICP District Collector in AP No. 244-2018.
66 Id., pp. 1555-1556.
67 Supra at note 49.
68 Exhibit "P-27", Judicial Affidavit of Wally C. Maniego dated 27 May 2019, id., Volume I, pp. 345-473, with photocopies of various exhibits.
69 Id., p. 351.
70 Par. 1.9.1.3, Statement of the Relevant Facts and Antecedent Proceedings, Petitioner's Memorandum dated 08 April 2021, id., Volume IV, pp. 1674-1675.
71 Exhibit "P-17", id., p. 123; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.

Order of Abandonment[72] (**Motions to Recall**), all dated 31 January 2019, to contest the Decrees of Abandonment for eleven (11) out of the fourteen (14) shipments, the details thereof are listed below:

Abandoned Shipment No.	Entry No.	Registry Date	BL No.	Arrival Date	AP No.	Date of Motion to Recall	Exhibit No.
1	C-266313	30-Sep-18	ONEYSGNU83956600	18 Sept. 2018	090-2019	31 Jan. 2019	"P-72"[73]
2	C-266303	30-Sep-18	ASC0185360	18 Sept. 2018	092-2019	31 Jan. 2019	"P-73"[74]
3	C-266321	30-Sep-18	HDMUBKML0975915	13 Sept. 2018	103-2019	31 Jan. 2019	"P-74"[75]
4	C-266308	30-Sep-18	ONEYSGNU77223300	18 Sept. 2018	087-2019	31 Jan. 2019	"P-75"[76]
5	C-266315	30-Sep-18	EGLV050800801314	24 Sept. 2018	089-2019	31 Jan. 2019	"P-76"[77]
6	C-266329	30-Sep-18	HDMUBKML0975857	13 Sept. 2018	113-2019	31 Jan. 2019	"P-77"[78]
7	C-266322	30-Sep-18	EGLV050800911462	24 Sept. 2018	094-2019	31 Jan. 2019	"P-78"[79]
8	C-266339	30-Sep-18	EGLV050800911454	24 Sept. 2018	091-2019	31 Jan. 2019	"P-79"[80]
9	C-266334	30-Sep-18	COAU7130774950	10 Sept. 2018	086-2019	31 Jan. 2019	"P-80"[81]
10	C-266328	30-Sep-18	EGLV050800911471	24 Sept. 2018	088-2019	31 Jan. 2019	"P-81"[82]
11	C-266333	30-Sep-18	ONEYSGNU77907500	18 Sept. 2018	093-2019	31 Jan. 2019	"P-82"[83]
12	C-251192	17-Sep-18	550810057348	07 Sept. 2018	255-2018	None	None
13	C-74891	20-Mar-18	CAOU7205325320	18 Feb. 2018	244-2018	None	None
14	C-285673	17-Oct-18	SGNCB18011703	23 Sept. 2018	116-2019	None	None

On 25 January 2019, petitioner allegedly filed its Letter-Appeals[84] of even date with respondent Customs Commissioner Guerrero to lift the MICP District Collectors' Decrees of Abandonment[85] and to release the various rice shipments. In the said Letter-Appeals, petitioner pleaded that: (1) the rice shipments are covered by valid import permits; (2) it already paid the customs duties in advance; and, (3) it filed a Letter-Appeal dated 23 January 2019[86] with respondent MICP District Collector Austria, explaining the reasons for the delay in the filing of the goods declaration such as the delay in the transmission of

72 Exhibits "P-72" to "P-82", BOC Records, Folder 3, pp. 401-444, Folder 4, pp. 144-299 and Folder 5, pp. 102-143.
73 Id., pp. 401-421, with supporting documents.
74 Id., pp. 422-444, with supporting documents.
75 Id., Folder 4, pp. 273-299, with supporting documents.
76 Id., pp. 253-272, with supporting documents.
77 Id., pp. 233-252, with supporting documents.
78 Id., pp. 207-232, with supporting documents.
79 Id., pp. 186-206, with supporting documents.
80 Id., pp. 165-185, with supporting documents.
81 Id., pp. 144-164, with supporting documents.
82 Id., Folder 5, pp. 123-143, with supporting documents.
83 Id., pp. 102-122, with supporting documents.
84 Exhibit "P-18", Division Docket, Volume I, pp. 124-132; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.
85 Supra at note 49.
86 Supra at note 71.

shipping documents and issuance of import permits that were beyond its control.

As testified to by the petitioner's office staff and records custodian, Jake Christian G. Reyes (**Reyes**), petitioner received two (2) emails from micp@customs.gov.ph on 25 January 2019 at 12:56 p.m. and 2:51 p.m., respectively, with the subject "Notices to Pay", or a few days after the issuance of then MICP District Collectors' Decrees of Abandonment[87] for some of the aforementioned shipments (*i.e.*, Shipment Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11).[88]

In the Order dated 27 February 2019[89], respondent MICP District Collector Austria denied petitioner's Letter-Appeal dated 23 January 2019.[90] The dispositive portion of the said Order reads:

> ...
>
> **WHEREFORE, premises considered**, by [the] authority vested in me by law, the Decree[s] of Abandonment are hereby **AFFIRMED** covering the subject shipments without prejudice to claimant's right to appeal to the Customs Commissioner pursuant to Section 3 of CMO No. 18-2014 (Guidelines on Lifting and Order of Abandonment).
>
> Let a copy of this Order be furnished all parties and Offices concerned for their information and guidance.
>
> SO ORDERED.
>
> ...

Respondent MICP District Collector Austria then transmitted his Order dated 27 February 2019[91] to respondent Customs Commissioner Guerrero for confirmation.

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87 Supra at note 49.

88 Exhibit "P-3", Judicial Affidavit of Jake Christian G. Reyes dated 27 May 2019, id., pp. 335-344, with photocopies of Exhibits "P-1" and "P-2".

89 Supra at note 4.

90 Supra at note 71.

91 Supra at note 5.

On 01 April 2019, respondent Customs Commissioner Guerrero rendered the assailed Consolidated Order[92], which affirmed respondent MICP District Collector Austria's Order dated 27 February 2019[93]. The dispositive portion of the said assailed Consolidated Order reads:

> ...
>
> **WHEREFORE**, premises considered, the Order dated 27 February 2019 of the MICP District Collector affirming the Decree of Abandonment over the subject rice shipments is hereby **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

Petitioner allegedly received a copy of the said assailed Consolidated Order[94] on 03 May 2019.[95]

Thereafter, on 02 May 2019, respondent Customs Commissioner Guerrero issued the similarly assailed Resolution[96], approving respondent MICP District Collector Austria's request for the public auction of the rice shipments. The dispositive portion provides:

> ...
>
> **WHEREFORE**, premises considered, this Office **APPROVES** the request of the MICP District Collector for the public auction of the subject rice shipments covered by Decrees of Abandonment under Abandonment Proceeding Nos. 039-2018, **262-2018**, **090-2019**, **092-2019**, **103-2019**, **087-2019**, **089-2019**, **113-2019**, **094-2019**, **091-2019**, **086-2019**, **088-2019**, **093-2019**, 064-2019, 065-2019, 084-2019, 083-2019, 082-2019, 085-2019, 095-2019, 066-2019, 081-2019, 109-2019, 079-2019, 099-2019, **255-2019**, 080-2019, 265-2018, 264-2018, 122-2019, 105-2019, 104-2019, 106-2019, 109-2019, 110-2019, 111-2019, 108-2019, 109-2019, 247-2018, 118-2019, 119-2019, 130-2018, 120-2019, 117-2019, 125-2018, 124-2018, 121-2018, 231-2018, 097-2019, 260-2018, **244-2018**, 084-2019, 085-2019, 095-2019, 083-2019, 228-2018.

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92 Supra at note 4.
93 Supra at note 5.
94 Supra at note 4.
95 Par. 1.13.1, Statement of the Relevant Facts and Antecedent Proceedings, Petitioner's Memorandum dated 08 April 2021, id., Volume IV, p. 1676.
96 Supra at note 6.

SO ORDERED.[97]

...

On the 3rd and 9th of May 2019, respondent MICP District Collector Austria posted on respondent BOC's website the "Notices of Public Auction". The subject rice shipments were scheduled for auction on the 20th (for Abandoned Shipment Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12/AP Nos. 090-2019, 092-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019 and 255-2018[98]), 22nd (for Abandoned Shipment No. 14/AP No. 116-2019[99]) and 24th (for Abandoned Shipment No. 13/AP No. 244-2018[100]) of May 2019, and again on the 24th (for all the shipments, except Abandoned Shipment No. 14/AP No. 116-2019[101]) of May 2019, all at 10:00 a.m. in the Conference Room, Office of the District Collector, Ground Floor, MICP Building, North Harbor, Isla Puting Bato, Del Pan, Manila.

In the aforesaid Notices of Public Auction, respondents set the floor price of the rice shipments at ₱17.00 *per* kilogram, which allegedly contravenes respondent BOC's own rules, *i.e.*, Customs Memorandum Order (**CMO**) No. 2-2019.[102]

On 07 May 2019, petitioner allegedly received a copy of respondent Customs Commissioner Guerrero's assailed Resolution.[103]

PROCEEDINGS BEFORE THE COURT

On 21 May 2019, petitioner filed an "Urgent Motion to Conduct Special Raffle" dated 16 May 2019[104], with attached Petition for

97 Emphasis and underscoring supplied.
98 Notice of Public Auction, Exhibit "P-21", Division Docket, Volume I, pp. 232-244; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.
99 Notice of Public Auction, Exhibit "P-22", id., pp. 245-252; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.
100 Notice of Public Auction, Exhibit "P-23", id., pp. 253-258; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.
101 Notice of Public Auction, Exhibit "P-24", id., pp. 259-282; Denied admission for failure to present the original for comparison *per* Resolution dated 29 September 2020, supra at note 20.
102 Guidelines in the Conduct of Public Auction and in Setting the Floor Price of Goods Subject thereto.
103 Par. 3.19, Part III (Statement of Facts and Antecedent Proceedings), Petition for Review, supra at note 1, p. 49.
104 Division Docket, Volume I, pp. 16-19.

Review[105], praying for this Court to issue a Temporary Restraining Order (**TRO**) and/or Writ of Preliminary Injunction (**WPI**) to enjoin respondents from proceeding with the public auction scheduled on 24 May 2019. Petitioner alleged that it was constrained to file such petition directly with this Court, without filing a Motion for Reconsideration (**MR**) with respondent Customs Commissioner Guerrero (to challenge the latter's assailed Consolidated Order[106] and Resolution[107]), given the impending auction of the subject rice shipments scheduled on 24 May 2019. The same was raffled to the Third Division[108] and docketed as CTA Case No. 10082.

On 21 May 2019, respondents posted in respondent BOC's website a Notice of Cancellation of Public Auction, cancelling the auction scheduled on 24 May 2019.[109]

On 22 May 2019, in lieu of the cancelled 24 May 2019 public auction, respondents posted in respondent BOC's website a new Notice of Public Auction, scheduling the public auction of the subject rice shipments on 27 May 2019.[110]

The Third Division then set the hearing on petitioner's Motion for Issuance of a TRO and/or WPI, embodied in its Petition for Review, on 29 May 2019. In the same notice, the Third Division likewise directed petitioner to file the judicial affidavits of its witnesses.[111]

On 23 May 2019, the Third Division likewise issued summonses to respondents.[112]

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[105] Supra at note 1.

[106] Supra at note 4.

[107] Supra at note 6.

[108] The Third Division is composed of Associate Justice Erlinda P. Uy, as Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban, as Member.

[109] Exhibit "P-25"; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 29 September 2020, supra at note 20; Annex "P-1" to petitioner's Manifestation dated 24 May 2019, id., Division Docket, Volume I, pp. 295-323, with annexes.

[110] Exhibit "P-26"; Denied admission for failure to submit the duly marked exhibit *per* Resolution dated 29 September 2020, supra at note 20; Annex "P-2" to petitioner's Manifestation dated 24 May 2019, id., pp. 300-323, with annexes.

[111] *See* Notice of Hearing dated 23 May 2019, id., pp. 327-328.

[112] Id., pp. 329-330.

On 29 May 2019, the Third Division cancelled the hearing on petitioner's Motion for Issuance of a TRO and/or WPI, previously scheduled on that day.[113] Subsequently, in the Resolution dated 30 May 2019[114], the Second Division (**Court**) reset the hearing to 06 June 2019.[115]

During the 06 June 2019 hearing, the Court considered petitioner's Motion for Issuance of a TRO and/or WPI as a Motion for the Suspension of Collection of Taxes (**Motion for Suspension**).[116] There, petitioner presented its witnesses, namely, Reyes and Maniego, who testified on direct examination by way of their respective Judicial Affidavits, and whose testimonies were completed after the respective cross-examinations.

On the witness stand, Reyes identified his Judicial Affidavit dated 27 May 2019[117], where he declared that: (1) as petitioner's office staff and records custodian, he is the safe-keeper of all of petitioner's records, including all accounting and import documents, and he is in charge of managing petitioner's email address (*i.e.*, vdrm corp@yahoo.com) and monitoring emails to petitioner; (2) he is the only one who has access to such email address, which petitioner has been using since August 2018; (3) he checks incoming emails around three (3) times a week; (4) he is aware that the subject rice shipments arrived between the months of March to September 2018; (5) petitioner did not receive any email or notice from respondent BOC from September to December 2018, otherwise, he would have immediately called the attention of petitioner's President/Chairman, Adoracion del Rosario (**President Del Rosario**); (6) President Del Rosario anxiously waited for such notices so that petitioner can pay for the customs duties due on the subject rice importations; (7) petitioner received two (2) emails from respondent BOC's email address (*i.e.*, micp@customs.gov.ph) with the subject "Notices to Pay" on 25 January 2019, at which time respondent BOC already issued Decrees of Abandonment[118] against petitioner's shipments; (8) the *first* **25 January**

113 *See* Notice of Cancellation dated 29 May 2019, id., Volume II, pp. 478-479.
114 Id., p. 481.
115 Associate Justice Erlinda P. Uy inhibited from the instant case. Thus, the case was re-raffled to the Second Division, composed of Associate Justice Juanito C. Castañeda, Jr., as Chairperson, and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Member.
116 *See* Minutes of the Hearing and Order, both dated 06 June 2019, Division Docket, Volume II, pp. 485-486 and 487-488, respectively.
117 Supra at note 88.
118 Supra at note 49.

2019 email received **at 12:56 p.m.** is a notice directing petitioner to pay duties, taxes and other charges pertaining to the shipments covered by the following Bill of Lading (**BL**) Nos. CAOU7205325320, HDMUBKML0979878, ASC0185365, 550810057300, 550810057348, and HDMUBKML0975915; and, (9) the *second* **25 January 2019** email received **at 2:51 p.m.** is a notice directing petitioner to pay duties, taxes and other charges pertaining to the shipment covered by BL No. HDMUBKML0975857.

On cross-examination, Reyes testified that, as to his statement that petitioner did not receive any email or notice from respondent BOC from September to December 2018, he did not bring at that time any proof that he indeed accessed petitioner's email account during the said period. Then, when asked whether he is aware if petitioner makes payment only after receiving a "Notice to Pay", he answered in the negative. Lastly, as to the date of the issuance of the Decrees of Abandonment[119], he initially said that he was not aware of the date thereof but then replied that it was before 25 January 2019 and that he did not receive any email from respondents before that date.[120]

Next to take the witness stand was Maniego who identified his Judicial Affidavit dated 27 May 2019[121] and declared therein that: (1) he works as an assistant/liaison officer in the office of Licensed Customs Broker, Jerson Delos Reyes (**LCB Delos Reyes**), since 2013; (2) as assistant/liaison officer, he assists LCB Delos Reyes in preparing customs documents for imports and exports, declaration of customs duties and taxes, preparation, signing, filing, lodging and processing of import and export entries, representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles; (3) petitioner is one of LCB Delos Reyes' clients; (4) he assisted LCB Delos Reyes in processing the release of petitioner's rice shipments such as filing the import entries, submitting the required documents and receiving the final assessment notices; (5) petitioner's rice shipments were not released as these were declared impliedly abandoned for failure to pay the assessed customs duties and failure to file goods declaration; (6) it was only when he followed-up with the Office of the MICP District

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119 Supra at note 49.
120 TSN dated 06 June 2019, pp. 18-22.
121 Supra at note 68.

Collector for the release thereof, he received copies of the Decrees of Abandonment[122] against petitioner's rice shipments and reported them to LCB Delos Reyes; (7) LCB Delos Reyes' office did not receive any notice of the abandonment proceedings prior to the issuance of such Decrees of Abandonment (*i.e.*, AP Nos. 090-2019, 092-2019, 103-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019, 255-2018, and 244-2018); (8) based on his weekly coordination with petitioner, the latter likewise did not receive any notice of abandonment from respondent BOC; (9) thereafter, he repeatedly requested the Office of the MICP District Collector to release the subject rice shipments, while petitioner filed Letter-Appeals[123], first with the Office of the MICP District Collector then with the Office of the Customs Commissioner; (10) he did not receive a copy of respondent MICP District Collector Austria's Order[124], denying the Letter-Appeal[125] and affirming the Decrees of Abandonment[126]; (11) then Customs Commissioner Guerrero issued the assailed Consolidated Order[127], affirming then MICP District Collector Austria's Order and declaring petitioner's rice shipments as impliedly abandoned for non-payment of customs duties and failure to file goods declaration; (12) then Customs Commissioner Guerrero issued the assailed Resolution[128], approving the public auction of petitioner's rice shipments; (13) then, *per* his regular checking of respondent BOC's bulletin board and official website posts, he discovered the posting of the "Notices of Public Auction"[129] covering petitioner's rice shipments; and, (14) respondent BOC then cancelled the auction previously scheduled on the 20th, 22nd and 24th of May 2019 and re-scheduled the same to 27 May 2019.

On cross-examination, Maniego testified that while LCB Delos Reyes does not handle all of petitioner's rice shipments, he nevertheless handled the fifteen (15) rice import shipments that were deemed abandoned and now the subject of this case. Later, when asked to show proof that it was LCB Delos Reyes who processed the clearance for the subject rice shipments with respondent BOC, he

122 Supra at note 49.
123 Supra at notes 71 and 84.
124 Supra at note 5.
125 Supra at note 71.
126 Supra at note 49.
127 Supra at note 4.
128 Supra at note 6.
129 Supra at notes 98 to 101.

failed to show any but explained that he has proof but he did not bring it during the hearing. Maniego also confirmed that he has been working for LCB Delos Reyes for about two (2) to three (3) years since 2013 and that petitioner is a regular rice importer. Lastly, when asked whether he did not personally see the postings on respondent BOC's bulletin board and official website, he answered in the affirmative, saying that somebody merely informs him if there is any post concerning petitioner's rice shipments.[130]

Petitioner thereafter presented and made an oral formal offer of its documentary evidence (*i.e.*, Exhibits "P-1" to "P-27", inclusive) in support of its Motion for Suspension. There being no objection from respondents on the existence of the said exhibits, the Court admitted the same. Upon motion, the Court set the presentation of respondents' evidence in opposition to petitioner's Motion for Suspension on 10 June 2019.[131]

During the 10 June 2019 hearing, respondents presented their witnesses, namely, COO Palaganas and Atty. Tomas D. Tagra, Jr. (**Atty. Tagra**), who testified on direct examination by way of their respective Judicial Affidavits, and whose testimonies were completed after the respective cross-examinations.

On the witness stand, COO Palaganas identified her Judicial Affidavit dated 07 June 2019[132], where she declared that: (1) she is the then COO III of the BOC-MICP-Administrative Division and has been employed in respondent BOC for twenty (20) years; (2) from January to February 2019, she was tasked to send notices to file, pay and claim goods to the registered email addresses of various importers and brokers *per* advice of respondent BOC's Law Division; and, (3) she sent a "Notice to Pay" to petitioner's registered email address (*i.e.*, vdrm_corp@yahoo.com) on **12 January 2019 at 3:34 p.m.**, as evidenced by the computer printouts of the "Notice to Pay"- screenshot[133] and the "Sent Items" of respondent BOC's email address (*i.e.*,

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[130] TSN dated 06 June 2019, pp. 27-32.
[131] Supra at note 116.
[132] Exhibit "R-28", Judicial Affidavit of Ma. Phililia Emilina D. Palaganas dated 07 June 2019, id., pp. 489-495, with certified original computer printouts of Exhibits "R-1" and "R-1-1"; Respondents re-marked Exhibits "R-1" and "R-1-1" to Exhibits "R-17" and "R-18" per Formal Offer of Evidence (FOE).
[133] Exhibit "R-17", supra at note 45.

micp@customs.gov.ph) - screenshot[134], showing that the "Notice to Pay" was successfully sent on the aforesaid date and time (on a **Saturday**).

On cross-examination, COO Palaganas admitted that she did not have with her then the documentary proof of her authority to send notices to file, pay and claim goods to the registered email addresses of various importers and brokers *per* advice of respondent BOC's Law Division from January to February 2019. When asked if a Saturday is a working day for respondent BOC, she replied that respondent MICP District Collector Austria sent a Memorandum dated January 11 that they should be in the office every 12th of the month. However, she did not bring a copy of the said Memorandum. Next, she confirmed that 3:34 p.m. is still an official working hour in her office.[135]

Still during the cross-examination, when asked if she knows when the Decrees of Abandonment[136] were issued, COO Palaganas answered in the negative. As to the two (2) emails, both with subject "Notice to Pay", sent by respondent BOC to petitioner on 25 January 2019, she likewise confirmed that she was the one who sent those email-notices. Lastly, she admitted that petitioner did not acknowledge her 12 January 2019 email (but she maintained that petitioner had received them) and she did not execute an affidavit that she served the "Notice to Pay" on that date.[137]

Atty. Tagra also assumed the witness stand where he identified his Judicial Affidavit dated 07 June 2019[138], wherein he declared that: (1) he is the then Acting Chief of the BOC-MICP-Law Division and has been employed in respondent BOC for eleven (11) years; (2) he oversees and supervises the entire operations and functions of the Law Division, among others; (3) the Law Division received a copy of the Petition for Review in CTA Case No. 10082, filed by petitioner against respondents; (4) petitioner is a regular importer of rice shipments; (5) petitioner seeks to restrain respondents from auctioning its rice shipments,

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134 Exhibit "R-18", Division Docket, Volume IV, p. 1513.

135 TSN dated 10 June 2019, pp. 6-14.

136 Supra at note 49.

137 Supra at note 135.

138 Exhibit "R-29", Judicial Affidavit of Atty. Tomas D. Tagra, Jr. dated 07 June 2019, id., pp. 496-551, with attached Exhibits "R-1" to "R-27"; Respondents failed to re-mark the subject exhibit to Exhibit "R-35" *per* Formal Offer of Evidence (FOE).

unloaded at the MICP from March to September 2018 and covered by various BLs vis-à-vis APs; (6) on 14 January 2019, the MICP District Collector declared the foregoing rice shipments as deemed abandoned for petitioner's failure to pay the customs duties, taxes and other charges, as evidenced by the Decrees of Abandonment[139]; (7) based on the Memorandum dated 08 January 2019[140] issued by Rizalino Jose C. Torralba, Acting Chief of the Formal Entry Division (**Acting Chief Torralba**), petitioner has unpaid customs duties, taxes and other charges; (8) as of 07 June 2019, petitioner's total unpaid customs duties, taxes and other charges amounts to ₱394,989,348.00 [broken down as follows: customs duties of ₱69,014,366.00, demurrage charges of ₱257,895,000.00 and Philippine Ports Authority (**PPA**) storage fees of ₱68,079,982.00], as evidenced by the Single Administrative Documents[141] (**SADs**) generated using respondent BOC's Electronic to Mobile System (**E2M**) when petitioner filed its import declarations relative to the subject rice shipments; and, (9) the E2M is the database system used by respondent BOC to record information relevant to import declaration of shipments that is linked with the Value Added Service Provider (**VASP**) system where customs brokers can view the status of shipments, including duties and taxes to be paid.

On cross-examination, Atty. Tagra stated that he assumed his position as Acting Chief of the BOC-MICP-Law Division in February 2019 and thus, his personal knowledge of the supposed issuance of the Decrees of Abandonment[142] is merely based on the record. When confronted on his statement that the Memorandum dated 08 January 2019[143] is proof that petitioner has unpaid customs duties, taxes and other charges and asked to point to the specific portion of the said document to confirm his statement, Atty. Tagra replied that the said document has an attachment referring to the subject matter of the present case but it was left out or not attached to the copy submitted in Court. He also admitted respondent BOC's Formal Entry Division officers or employees prepared the SADs and that he was just furnished printouts thereof. He then explained that the said system generated printout is usually unsigned as it is already a functional equivalent of the hard copy entry.[144]

[139] Supra at note 49.
[140] Exhibit "R-1", Division Docket, Volume IV, pp. 1493-1494.
[141] Exhibits "R-2" to "R-15", id., pp. 1495-1512.
[142] Supra at note 49.
[143] Supra at note 140.
[144] TSN dated 06 June 2019, pp. 17-22.

In response to the Court's clarificatory questions concerning petitioner's unpaid customs duties, taxes and other charges, Atty. Tagra explained that: (1) the demurrage charges are those charged by the shipping lines for the delay in the removal of petitioner's boxes or containers; (2) if such boxes or containers remain unclaimed beyond 10-15 days from arrival date, the shipping lines will charge demurrage for each box or container continuously on a daily basis; (3) in this case, the demurrage charges (*i.e.*, ₱257,895,000.00) is already much higher than the customs duties (*i.e.*, ₱69,014,366.00); (4) the PPA storage fees, on the other hand, are charges billed to respondent BOC by its port operator, International Container Terminal Services, Inc. (**ICTSI**).[145]

After the completion of the testimony of respondents' witnesses, COO Palaganas and Atty. Tagra, respondents' counsel orally offered Exhibits "R-1" to "R-27", inclusive, in support of its Opposition to petitioner's Motion for Suspension. Over the objections of petitioner's counsel, the Court admitted the said exhibits and granted the parties five (5) days, or until 15 June 2019, to file their respective memoranda; after which, petitioner's Motion for Suspension is deemed submitted for resolution.[146]

Petitioner's Memorandum[147] and respondents' Memorandum[148] were both filed on 17 June 2019.

In the Resolution dated 28 June 2019[149], the Court denied petitioner's Motion for Suspension for lack of merit. The Court noted that enjoining the public auction sale will actually adversely affect the interest of both parties. The dispositive portion of the said Resolution reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction** is **DENIED** for lack of merit.

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145 Id., pp. 22-23.

146 *See* Minutes of the Hearing and Order, both dated 10 June 2019, Division Docket, Volume II, pp. 552 and 553, respectively.

147 Id., pp. 584-620.

148 Id., pp. 564-581.

149 Id., pp. 657-664.

SO ORDERED.

...

Meanwhile, on 25 June 2019, after the Court granted respondents an extension of time[150], respondents filed their Answer[151], interposing the following special and affirmative defenses, to wit: (1) respondent Customs Commissioner Guerrero's Consolidated Order dated 01 April 2019, confirming the Decrees of Abandonment[152] against petitioner's rice import shipments, is final and executory; and, (2) the Decrees of Abandonment, declaring petitioner's rice import shipments "deemed abandoned", were validly issued in accordance with Section 1129(c)[153], in relation to Sections 117[154] and 406[155] of the CMTA, which requires an importer to lodge or file an entry declaration within 15 days from unloading, and pay the assessed customs duties and taxes within 15 days from the date of final assessment.

In the same Order granting respondents' request for extension, the Court directed respondents to forward the entire BOC Records within 10 days after the filing of its Answer.[156] In compliance therewith, respondents, through the OSG, submitted on 16 July 2019, the entire BOC Records.[157]

On 08 July 2019, the Court issued a Notice of Pre-Trial Conference[158] and set the case for pre-trial conference on 01 August 2019. In compliance with the Court's order therein, petitioner filed its

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150 *See* Order dated 21 June 2019, id., p. 628.

151 Photocopy attached to respondents' Manifestation dated 25 June 2019, id., pp. 632-652; Original copy received by the Court on 03 July 2019, id., pp. 665-688.

152 Supra at note 49.

153 Supra at note 48.

154 **SEC. 117**. *Regulated Importation and Exportation*. — Goods which are subject to regulation shall be imported or exported only after securing the necessary goods declaration or export declaration, clearances, licenses, and any other requirements, prior to importation or exportation. In case of importation, submission of requirements after arrival of the goods but prior to release from customs custody shall be allowed but only in cases provided for by governing laws or regulations.

155 **SEC. 406**. *Importations by the Government*. — Except those provided for in Section 800 of this Act, all importations by the government for its own use or that of its subordinate branches or instrumentalities, or corporations, agencies or instrumentalities owned or controlled by the government, shall be subject to the duties, taxes, fees and other charges under this Act.

156 Supra at note 151.

157 *See* Minute Resolution dated 17 July 2019 and Submission dated 15 July 2019 (with Table of Contents), Division Docket, Volume II, pp. 715 and 706-712, respectively.

158 Id., pp. 690-691.

Pre-Trial Brief[159] on 29 July 2019, while respondents filed their Pre-Trial Brief[160] on 01 August 2019.

On 15 July 2019, petitioner filed an MR[161] of the Court's 28 June 2019 Resolution. After being granted an extension of time[162], respondents filed their Comment[163] thereto on 07 August 2019. Later, in the Resolution dated 06 November 2019[164], the Court denied petitioner's MR for lack of merit.

On 22 July 2019, petitioner filed a "Motion for Leave (to File Reply)"[165] with attached Reply.[166] In its Resolution dated 30 July 2019[167], the Court granted the said motion and deemed admitted the Reply attached thereto, in the interest of substantial justice.

On 29 July 2019, respondents filed a "Motion to Reset Pre-Trial Conference"[168], previously scheduled on 01 August 2019 to 05 September 2019 or at any other date convenient to the Court. In its Order dated 01 August 2019[169], the Court reset the Pre-Trial Conference to 15 August 2019.

After the pre-trial held on 15 August 2019, the parties submitted their Joint Stipulation of Facts and Issues[170] (**JSFI**) on 16 September 2019. Pursuant thereto, the Court issued a Pre-Trial Order[171] on 23 October 2019, and the Pre-Trial Conference was deemed terminated.

On 28 October 2019, during the hearing for the initial presentation of evidence for petitioner, petitioner's counsel moved for the resetting of the presentation of its two (2) witnesses, Reyes and Maniego. The Court granted the same and reset the hearing to 06

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159 Id., Volume III, pp. 969-992.
160 Id., pp. 928-941.
161 Id., Volume II, pp. 692-703.
162 *See* Order dated 07 August 2019, id., Volume III, p. 952.
163 Id., pp. 962-966.
164 Id., pp. 1099-1103.
165 Id., Volume II, pp. 725-728.
166 Annex "A", id., pp. 729-745.
167 Id., Volume III, p. 921.
168 Id., pp. 958-961.
169 Id., p. 945.
170 Id., pp. 1028-1032.
171 Id., pp. 1072-1083.

November 2019. The Court further noted respondents' counsel's manifestation that respondents' witnesses should be then Acting Chief Torralba and Ivy Joy Nitura (**Nitura**), not COO Palaganas and Atty. Tagra, and that respondents will be adopting the testimonies of COO Palaganas and Atty. Tagra during the hearing on petitioner's Motion for Suspension.[172]

On 04 November 2019, petitioner filed a "Motion to Correct and/or Amend Pre-Trial Order"[173], asking the Court to amend portions of the Pre-Trial Order, specifically: (1) Part I to include AP No. 116-2019; (2) Part III(A)(2) to include as additional witness "a witness from Land Bank of the Philippines"; (3) Part III(A)(2) to include the words "[p]etitioner reserved the right to present additional witness in the course of trial"; and, (4) Part IV as petitioner will present Reyes and Maniego on 06 November 2019 and a witness from LandBank on 27 November 2019 (or on any later date convenient to the Court). There being no objection from respondents' counsel, the Court granted the same during the 06 November 2019 hearing and thereby, the Pre-Trial Order dated 23 October 2019 was deemed amended (**Amended Pre-Trial Order**).[174] The Court likewise noted (1) petitioner's counsel's manifestation that petitioner will be adopting the direct testimonies of Reyes and Maniego during the hearing on its Motion for Suspension; and, (2) respondents' counsel's manifestation that he will only cross-examine Reyes (and not Maniego).[175]

During the cross-examination, Reyes testified that: (1) he still works for petitioner; (2) he reports for work six (6) times a week, Monday to Saturday, from 8:00 a.m. to 5:00 p.m.; (3) on his statement that he checks petitioner's emails at least three (3) times a week, he clarified that he does so irregularly or at no specific days in a week; and, (4) it's possible that he opens an email sent, for instance, on a Saturday not on that same day but later, on Tuesday or Wednesday.[176]

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172 *See* Minutes of the Hearing and Order, both dated 28 October 2019, id., pp. 1089 and 1090, respectively.
173 Id., pp. 1091-1096.
174 *See* Minutes of the Hearing and Order, both dated 06 November 2019, id., pp. 1104 and 1105, respectively.
175 Id.
176 TSN dated 06 November 2019, pp. 7-11.

On the next hearing date, or on 27 November 2019, petitioner's counsel manifested that he has no witness to present as his intended witnesses, who are employees from LandBank, wanted him to first secure a subpoena. In the interest of substantial justice, the Court allowed petitioner's counsel to present his witnesses from LandBank, without the issuance of a subpoena, on the condition that he will submit their respective judicial affidavits and serve copies thereof to respondents' counsel, within a period of 30 days from 27 November 2019, and reset the hearing to 22 January 2020.[177]

Previously, on 26 November 2019, petitioner filed its "Request for Issuance of Subpoena Ad Testificandum"[178] (**first Request**), requesting the Court to issue a subpoena *ad testificandum* to the following witnesses: (1) Eusebio, Department Manager of LandBank Cabanatuan, Maharlika Highway Branch; and, (2) Rumbaoa, Import/Export Document Specialist at the International Trade Department of LandBank's Head Office. Later, on 16 January 2020, petitioner filed similar request for the issuance of a subpoena *ad testificandum* to the aforesaid witnesses (**second Request**).[179]

Pending notice of the Court's receipt of the second Request, in the Resolution dated 17 January 2020[180], the Court denied petitioner's first Request for lack of merit, mainly because petitioner failed to establish that Eusebio and Rumbaoa unjustifiably refused to execute judicial affidavits. However, during the hearing on 22 January 2020, the Court granted petitioner's second Request, there being no objection from respondents' counsel, and reset the presentation of Eusebio and Rumbaoa to 02 March 2020.[181]

Pending the issuance of the subpoena *ad testificandum*, petitioner once again filed a "Request for Issuance of Subpoena Ad Testificandum"[182] (**third Request**), requesting the Court to direct Eusebio and Rumbaoa to: (1) attend the scheduled hearing on 02

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177 *See* Minutes of the Hearing and Order, both dated 27 November 2019, id., pp. 1111 and 1112-1113, respectively.
178 Id., pp. 1106-1108.
179 Id., pp. 1114-1130, with annexes.
180 Id., pp. 1202-1205.
181 *See* Minutes of the Hearing and Order, both dated 22 January 2020, id., pp. 1206 and 1207, respectively.
182 Id., pp. 1209-1211.

March 2020; and, (2) personally appear before petitioner's counsel on 20 February 2020, for the drafting and execution of their respective judicial affidavits.

On the next hearing date, or on 02 March 2020, petitioner presented its additional witnesses, Eusebio and Rumbaoa, who identified their Judicial Affidavits dated 24 February 2020[183] and 28 February 2020[184], respectively.

In her Judicial Affidavit dated 24 February 2020[185], Eusebio declared, among others, that: (1) she is the Department Manager of LandBank Cabanatuan Maharlika Highway Branch and has since been working for LandBank for more than 28 years; (2) as Department Manager, her functions include marketing of deposits and other products of LandBank, managing all aspects of the Branch operations, approving transactions beyond the authority of supervisors, approving documents related to daily transactions and custody of her Branch's documents; (3) petitioner is one of her Branch's clients and she is aware that petitioner is engaged in rice milling and rice importation; (4) her Branch processes petitioner's banking transactions such as deposits, withdrawals, issuances of Manager's Check/s (**MCs**), payroll uploading, fund transfers from one (1) account to other accounts maintained at her branch, as well as fund transfers to petitioner's account at LandBank Malate, for the payment of customs tariffs and duties for rice importation; (5) a debit advice is a bank form prepared to process a client's request or instruction to debit a particular account maintain at a LandBank branch for the purpose(s) indicated therein and such form is also validated by the branch bookkeeper to debit the client's account number indicated therein; (6) as to the procedure in applying for a debit advice, a client submits to the Branch a request for or instruction, duly signed by an authorized account signatory, authorizing LandBank to debit its account for purposes such as fund transfer, payment of loan, payment or remittance to the Bureau of Internal Revenue (**BIR**) or other government agencies such as respondent BOC, other charges and fees due to LandBank; (7) the Debit Advice dated 27 July 2018 and the Debit Advice dated 09 January 2018, both issued to LandBank in the amounts of ₱350,929,225.00 and

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183 Supra at note 28.
184 Supra at note 29.
185 Supra at note 28.

₱41,324,794.00, respectively, are for the purpose of payment of customs duties under petitioner's NFA MAV with Reference Nos. MAV-2018-COE-12 and MAV-2018-COE-12, respectively; and, (8) as to whether an amount has been credited to respondent BOC's account for such purpose, the International Trade Department of LandBank's Head Office is in a better position to answer the question and the proof thereof is the Credit Advice sent to respondent BOC.

On cross-examination, Eusebio confirmed that her Branch (*i.e.*, LandBank Cabanatuan Maharlika Highway Branch) transferred the amounts covered by the aforesaid Debit Advices from petitioner's account at her Branch to its account at LandBank's Head Office - Cash Plaza. She also clarified that the several Debit Advices issued were not the ones processed at her Branch as her Branch did separate fund transfers of the same amounts, as aforesaid, from petitioner's account at her Branch to that indicated in the Debit Advices (*i.e.*, LandBank's Head Office - Cash Plaza). In this regard, she confirmed that her Branch had no participation in the subsequent debiting of petitioner's account at LandBank's Head Office - Cash Plaza. She likewise confirmed that the debit of petitioner's account happened before the importation of the shipments subject of the present case and that she is unaware of the procedure for clearing of customs shipments in the Port Area. As regards the latter, she stated that it is being done by the International Trade Department of LandBank's Head Office - Cash Plaza. She also explained that the purpose for the issuance of the Debit Advices was for payment of customs duties as so written in the "Particulars" portion.[186]

In her Judicial Affidavit dated 28 February 2020[187], Rumbaoa declared, among others, that: (1) she is an Import/Export Document Specialist at the International Trade Department of LandBank's Head Office - Cash Plaza; (2) one of her duties is to process payments of customs duties for clients/importers based on the documents required by LandBank and respondent BOC, including advance payments of customs duties required for NFA Rice Importation Programs; (3) she knows that petitioner is engaged in rice importation business and has an account at LandBank Cabanatuan Maharlika Highway Branch and a separate account at LandBank's Head Office - Cash Plaza; (4) she has

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186 TSN dated 02 March 2020, pp. 8-12.
187 Supra at note 29.

been processing petitioner's documents relating to its rice importation business since 2016, more particularly, its payment of customs duties to respondent BOC; (5) petitioner submitted to LandBank's Head Office its Certificate of Eligibility (**COE**) to Import Rice and, at the same time, issued an Authority to Debit from Account (**ADA**) maintained at Cash Plaza and, in turn, LandBank's Head Office debited the amount indicated in the COE and issued a Debit Advice as proof that petitioner's account was already debited for the advance payment; (6) the funds indicated in the Debit Advices came from petitioner's account at LandBank's Head Office - Cash Plaza; (7) the Debit Advice dated 27 July 2018 and the Debit Advice dated 09 January 2018, signify that petitioner's account at LandBank's Head Office - Cash Plaza has already been debited in the amounts of ₱350,929,225.00 and ₱41,324,794.00, respectively; (8) the International Trade Department of LandBank's Head Office - Cash Plaza debited petitioner's account based on its COE to Import Rice and ADA and temporarily booked the said amounts as Accounts Payable and the application thereof will be done upon the Request for Payment (**RFP**) from respondent BOC through the Payment Application Secure System (**PASS5**); (9) advance payment of customs duties is a pre-requisite for the issuance of Import Permit by the NFA; (10) from the ₱350,929,225.00 advance payment *per* NFA MAV with Reference No. MAV-2018-COE-123, a total of **₱283,386,825.00** was applied and remitted to respondent BOC through the BTr from August 2018 to April 2019 and the outstanding balance thereof is ₱67,542,400.00 (as of 28 February 2020); (11) from the ₱41,324,794.00 advance payment *per* NFA MAV with Reference No. MAV-2017-COE-257, a total of **₱27,969,220.00** was applied and remitted to respondent BOC through the BTr from January 2018 to August 2018 and the outstanding balance thereof is ₱13,355,574.00 (as of 28 February 2020); and, (12) the said outstanding balances are available for petitioner's proper disposition.

On cross-examination, Rumbaoa declared that the Debit Advices were issued in compliance with NFA's requirement issuance of petitioner's importation permits and the amounts covered by such Debit Advices were debited from petitioner's account and credited to respondent BOC's account with LandBank's Head Office - Cash Plaza. Upon clarification, she testified that a certain amount is credited to respondent BOC's account every time an assessment notice is issued and not immediately after petitioner's account is debited. When asked if she is aware that the shipments subject of the present case are not the only rice importations of petitioner during the covered period, she answered in the negative. She, however, confirmed that there is a list of shipments with the corresponding assessment notice for each shipment and the amount to be debited as payment of customs duties. Only those entries processed through the PASS5 are credited to respondent BOC's account. While she did not have a copy of the said list during the hearing, she stated that petitioner was furnished a copy thereof. She added that her office has a copy of the SAD for every shipment the assessment for which was paid by petitioner and credited by her office to respondent BOC's account. Lastly, she clarified that, at the time petitioner's accounts were debited, the amounts debited were not yet deemed as payment for petitioner's importations as such were merely advance payments for customs duties and the application against such advance payments is done only upon an RFP from respondent BOC through the PASS5.[188]

On 16 July 2020, after completing the presentation of its testimonial evidence and after being granted an extension of time[189], petitioner filed its Formal Offer of Evidence[190] (**FOE**) consisting of Exhibits "P-1" to "P-91-A", inclusive of sub-markings, On 17 September 2020, respondents filed their Comment[191] thereto.

In the Resolution dated 29 September 2020[192], the Court admitted petitioner's exhibits *except* for: (1) Exhibits "P-1", "P-2", "P-15", "P-16", "P-17", "P-18", "P-21", "P-22", "P-23", "P-24", "P-47", "P-64" and "P-65"[193], for failure to present the originals for comparison; (2) Exhibits

188 TSN dated 02 March 2020, pp. 16-21.
189 *See* Order dated 13 March 2020, Division Docket, Volume III, p. 1252.
190 Id., pp. 1272-1308.
191 Id., pp. 1313-1348, with annexes.
192 Supra at note 20.
193

Exhibit No.	Description
"P-1"	Email entitled "Notice to Pay" sent by sender "BOC-MICP" with email address micp@customs.gov.ph received on 25 January 2019 at 12:56 p.m. It is a notice directing petitioner to pay duties, taxes and other charges pertaining to the following shipments covered by the following BL Nos. CAOU7205325320, HDMUBKML0979878, ASC0185365, 550810057300, 550810057348, and HDMUBKML0975915.
"P-2"	Email entitled "Notice to Pay" sent by sender "BOC-MICP" with email address micp@customs.gov.ph received on 25 January 2019 at 2:51 p.m. It is a notice directing petitioner to pay duties, taxes and other charges pertaining to the shipment covered by BL No. HDMUBKML0975857.

"P-25" and "P-26"[194], for failure to submit the duly marked exhibits; (3) Exhibits "P-54", "P-67", "P-68", "P-69"[195], for failure to present the originals for comparison and for failure to identify; and, (4) Exhibit "P-63"[196], for failure of the exhibit formally offered to correspond with the document actually marked.

For their part, respondents presented testimonial and documentary evidence. As mentioned earlier, respondents adopted the testimonies of COO Palaganas and Atty. Tagra during the hearing on petitioner's Motion for Suspension. Petitioner's counsel manifested that she will not conduct any cross-examination on both witnesses. In addition, and contrary to their earlier manifestation to likewise offer Torralba's testimony, respondents offered only the testimony of

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"P-15"	Decree of Abandonment in AP No. 0255-2018 dated 12 October 2018 declaring the rice shipment covered by BL No. 550810057348.
"P-16"	Decree of Abandonment in AP No. 0244-2018 dated 12 October 2018 declaring the rice shipment covered by BL No. CAOU7205325320.
"P-17"	Petitioner's Letter-Appeal dated 24 January 2019 to respondent MICP District Collector Austria.
"P-18"	Petitioner's Letter-Appeal dated 25 January 2019 to respondent Customs Commissioner Guerrero.
"P-21"	Notice of Public Auction scheduled on 20 May 2019 (for Abandoned Shipment Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12/AP Nos. 090-2019, 092-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019 and 255-2018)
"P-22"	Notice of Public Auction scheduled on 22 May 2019 (for Abandoned Shipment No. 14/AP No. 116-2019)
"P-23"	Notice of Public Auction scheduled on 24 May 2019 (for Abandoned Shipment No. 13/AP No. 244-2018)
"P-24"	Notice of Public Auction scheduled on 24 May 2019 (for all the shipments, except Abandoned Shipment No. 14/AP No. 116-2019)
"P-47"	SAD/Import Entry No. 266329 (Reference: AP No. 113-2019).
"P-64"	Import Permit No. MAV-2017-01076 (Reference: AP No. 0255-2018).
"P-65"	SAD/Import Entry No. 251192 for BL No. 550810057348 (Reference: AP No. 0255-2018).

194

Exhibit No.	Description
"P-25"	Notice of Cancellation dated 21 May 2019.
"P-26"	Notice of Public Auction dated 23 May 2019.

195

Exhibit No.	Description
"P-54"	BL No. COAU7130774950.
"P-67"	Import Permit No. MAV-2017-0707 (Reference: AP No. 0244-2018).
"P-68"	BL No. SGNCB18011703 (Reference: AP No. 116-2019).
"P-69"	Import Permit No. MAV-2018-0553 (Reference: AP No. 116-2019).

196 Described as BL No. 550810057348 (Reference: AP No. 0255-2018).

witness Nitura, who identified her Judicial Affidavit dated 11 November 2020[197] at the hearing on 18 November 2020.[198]

In her Judicial Affidavit dated 11 November 2020[199], Nitura declared, among others, that: (1) she is a Customs Examiner detailed at BOC-MICP-Assessment Division; (2) during the periods subject of the present case, she was detailed at BOC-MICP-Cargo Disposal Division; (3) as part of the Auction & Cargo Disposal Division, she took on functions that involved the records custody and review of endorsements from BOC-MICP-Law Division; (4) the subject case involves petitioner's rice import shipments for the period 10 March 2018 to 17 October 2018 that were declared impliedly abandoned on 14 January 2019 on the ground of failure to lodge the shipment, non-payment of customs duties, taxes and other charges and failure to collect the articles within the allowed period; (5) BOC-MICP-Cargo Disposal Division received copies of the Decrees of Abandonment[200] of the subject shipments from BOC-MICP-Law Division; (6) petitioner had 15 rice import shipments that were recommended to undergo abandonment proceedings[201], as evidenced by original computer printouts of the SADs issued for the subject shipments with corresponding BLs (*i.e.*, Exhibits "R-2" to "R-15"); (7) considering that petitioner's subject import shipments were declared abandoned for non-payment of customs duties, taxes and other charges and failure to claim within the required period, BOC-MICP-Cargo Disposal Division

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197 Exhibit "R-36", Judicial Affidavit of Ivy Joy Nitura dated 11 November 2020, Division Docket, Volume III, pp. 1379-1447, with copies of Exhibits "R-2" to "R-33".

198 *See* Minutes of the Hearing and Order, both dated 18 November 2020, id., pp. 1451 and 1452, respectively.

199 Supra at note 197.

200 Supra at note 49.

201

No.	BL No.	Date of Arrival	Entry No.	Date of Declaration	Dutiable Value	Assessed Duties	Date of Assessment	AP No.	Exhibit No.
1	HDMUBKML0979391	Not indicated	C-285662	17-Oct-18	₱18,431,173.00	6,461,398.00	11-Nov-18	262-2018	"R-2"
2	ONEYSGNU83956600	27-Sep-18	C-266313	30-Sep-18	13,035,498.00	4,569,121.00	30-Sep-18	090-2019	"R-3"
3	ASC0185360	10-Mar-18 and 27-Sep-18	C-266303	30-Sep-18	15,561,514.00	5,454,312.00	30-Sep-18	092-2019	"R-4"
4	HDMUBKML0975915	16-Sep-18	C-266321	30-Sep-18	45,624,244.00	15,988,762.00	30-Sep-18	103-2019	"R-5"
5	ONEYSGNU77223300	27-Sep-18	C-266308	30-Sep-18	13,035,498.00	4,569,121.00	30-Sep-18	087-2019	"R-6"
6	EGLV050800801314	27-Sep-18	C-266315	30-Sep-18	12,597,272.00	4,415,742.00	30-Sep-18	089-2019	"R-7"
7	EGLV050800911462	27-Sep-18	C-74891*	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	094-2019	"R-8"
8	EGLV050800911454	27-Sep-18	C-266339	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	091-2019	"R-9"
9	COAU7130774950	13-Sep-18	C-266334	30-Sep-18	16,325,395.00	5,721,943.00	30-Sep-18	086-2019	"R-10"
10	EGLV050800911471	10-Mar-18	C-266328	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	088-2019	"R-11"
11	ONEYSGNU77907500	27-Sep-18	C-266333	30-Sep-18	19,553,247.00	6,853,049.00	30-Sep-18	093-2019	"R-12"
12	550810057348	13-Sep-18	C-251192	17-Sep-18	11,547,932.00	4,048,433.00	18-Sep-18	255-2018	"R-13"
13	CAOU7205325320	17-Mar-18	C-74891	20-Mar-18	9,238,181.00	3,239,051.00	10-Aug-18	244-2018	"R-14"
14	SGNCB18011703	23-Sep-18	C-285673	17-Oct-18	13,790,718.00	4,835,072.00	28-Nov-18	116-2019	"R-15"
15	HDMUBKML0975857	16-Sep-18	No Entry Filed.	N/A	N/A	N/A	N/A	113-2019	None.

*Should be Entry No. C-266322.

verified with respondent BOC's E2M System, particularly the SADs, such non-payment and failure to claim the subject shipments; (8) after said verification, petitioner was duly notified of the abandonment proceedings; (9) assessed customs duties for importations are readily accessible through petitioner's or its custom agent's window portal to the E2M System; BOC-MICP-Administrative Division sent a "Notice to Pay" to petitioner's registered email address at vdrm corp@yahoo.com, as evidenced by the original computer printouts of the screenshots of the actual email and the "Sent Items" of respondent BOC's official email address at micp@customs.gov.ph, showing that the "Notice to Pay" was successfully sent on 12 January 2019 at 3:34 p.m.; (10) despite due notice, petitioner still failed to pay the assessed customs duties for its rice import shipments; (11) consequently, on 14 January 2019, abandonment proceedings for the subject shipments commenced and, eventually, respondent MICP District Collector declared the subject shipments as deemed abandoned, as evidenced by the Decrees of Abandonment (*i.e.*, Exhibits "R-19" to "R-33")[202]; (12) two (2) rice import shipments with BL Nos. HDMUBKML0979391 and SGNCB18011703 were declared abandoned for petitioner's failure to claim the shipments within the required 30-day period from payment date; (13) twelve (12) rice import shipments with BL Nos. ONEYSGNU83956600, ASC0185360, HDMUBKML0975915, ONEYSGNU77223300, EGLV050800801314, EGLV050800911462, EGLV050800911454, COAU7130774950, EGLV050800911471, ONEYSGNU77907500, 550810057348 and CAOU7205325320 were declared abandoned for petitioner's failure to pay the assessed customs duties; (14) one (1) rice import shipment with

202

No.	BL No.	Commodity Specification	Date of Arrival	Entry No.	AP No.	Decree/ Order Date	Exhibit No.
1	HDMUBKML0979391	Thai White Rice 5% Broken	01-Sep-18	No Import Entry was filed.	262-2018	12-Oct-18	"R-19"
2	ONEYSGNU83956600	Vietnam White Rice, 5% Broken	23-Sep-18	C-266313	090-2019	14-Jan-19	"R-20"
3	ASC0185360	Vietnam White Rice, 5% Broken	20-Sep-18	C-266303	092-2019	14-Jan-19	"R-21"
4	HDMUBKML0975915	Thai White Rice 5% Broken	17-Sep-18	C-266321	103-2019	14-Jan-19	"R-22"
5	ONEYSGNU77223300	Vietnam White Rice, 5% Broken	25-Sep-18	C-266308	087-2019	14-Jan-19	"R-23"
6	EGLV050800801314	Thai White Rice 5% Broken	27-Sep-18	C-266315	089-2019	14-Jan-19	"R-24"
7	EGLV050800911462	Thai White Rice 5% Broken	26-Sep-18	C-266322	094-2019	14-Jan-19	"R-25"
8	EGLV050800911454	Thai White Rice 5% Broken	06-Sep-18	C-266339	091-2019	14-Jan-19	"R-26"
9	COAU7130774950	Thai White Rice 5% Broken	13-Sep-18	C-266334	086-2019	14-Jan-19	"R-27"
10	EGLV050800911471	Thai White Rice 5% Broken	27-Sep-18	C-266328	088-2019	14-Jan-19	"R-28"
11	ONEYSGNU77907500	Vietnam White Rice, 5% Broken	23-Sep-18	C-266333	093-2019	14-Jan-19	"R-29"
12	550810057348	Pakistan IRRI-6 White Rice, 5% Broken, Double Silky Polish & Sortexed Crop	08-Sep-18	C-251192	255-2018	12-Oct-18	"R-30"
13	CAOU7205325320	Pakistan IRRI-6 White Rice, 5% Broken, Double Silky Polish & Sortexed Crop	17-Mar-18	C-74891	244-2018	10-Oct-18	"R-31"
14	SGNCB18011703	Vietnam White Rice, 5% Broken	25-Sep-18	C-285673	116-2019	29-Jan-19	"R-32"
15	HDMUBKML0975857	Thai White Rice 5% Broken	16-Sep-18	An Import Entry was lodged but not yet filed.	113-2019	28-Jan-19	"R-33"

BL No. HDMUBKML0975857 was declared abandoned for petitioner's failure to lodge the shipment within 15 days from the shipment's discharge from the vessel; (15) after seizure by BOC-MICP, some of the rice import shipments were sold through public auction, as allowed through a Resolution by the Port, while the rest were stored at the Pacific Roadlink Logistics, Inc. container yard; and, (16) the perishable nature of the subject rice import shipments necessitated its public sale.

On cross-examination, Nitura confirmed that the "Notice to Pay"[203] was sent *via* email to petitioner's registered email address at 3:34 p.m. on 12 January 2019 and respondent BOC commenced the abandonment proceedings on 14 January 2019, or two (2) days after sending the "Notice to Pay". She also admitted that the printout of the said email "Notice to Pay" was not attached to the Decrees of Abandonment.[204]

Still during the cross-examination, Nitura declared that under CMO No. 16-2019[205], proof of electronic service shall be made by the acknowledgment of the owner, importer, consignee or interested parties served or by such affidavit of the parties serving the same. As applied to this case, she stated that petitioner did not acknowledge receipt of the said "Notice to Pay" purportedly sent on 12 January 2019. As to the Decrees of Abandonment, she confirmed that there is proof of petitioner's receipt of the same. Lastly, she confirmed that, as early as 20 July 2017 and 09 January 2018, petitioner made advance payments of customs duties in the amounts of ₱350,929,225.00 and ₱41,324,794.00, respectively.[206]

On re-direct examination, Nitura confirmed that petitioner's deposits to its LandBank account on 20 July 2017 and 09 January 2018 were advance payments for assessed customs duties.[207]

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203 Supra at note 45.
204 Supra at note 49.
205 GUIDELINES ON THE SENDING OF NOTICE UNDER SECTION 1129 (ABANDONMENT, KINDS AND EFFECTS) OF THE CMTA.
206 TSN dated 18 November 2020, pp. 6-12.
207 Id., pp. 13-14.

On 05 February 2021, respondents filed their FOE[208], consisting of Exhibits "R-1" to "R-36", inclusive of sub-markings, with petitioner's Comment[209] thereto filed on 22 February 2021. Over petitioner's objections, in the Resolution dated 05 March 2021, the Court admitted all of respondents' exhibits, *except* Exhibit "R-2"[210], for failure of the exhibit formally offered and identified to correspond with the document actually marked.[211] In the same Resolution, the Court granted both parties a period of thirty (30) days from notice within which to file their respective memoranda.

In compliance with the Court's directive, petitioner filed its Memorandum[212] on 12 April 2021 while respondents, after being granted an extension of time[213], filed their Memorandum[214] on 22 June 2021. Accordingly, on 28 June 2021, the Court considered the case submitted for decision.[215]

ISSUES

As the parties so stipulated[216], the main issues and sub-issues for this Court's resolution are —

I.

WHETHER RESPONDENT CUSTOMS COMMISSIONER REY LEONARDO B. GUERRERO'S CONSOLIDATED ORDER DATED 01 APRIL 2019 AND RESOLUTION DATED 02 MAY 2019 SHOULD BE REVERSED AND SET ASIDE;

I.A

WHETHER PETITIONER VICTOR R. DEL ROSARIO RICE MILL CORPORATION WAS DENIED DUE PROCESS OF LAW WHEN RESPONDENT MANILA INTERNATIONAL CONTAINER PORT (MICP) DISTRICT COLLECTOR ISSUED THE NOTICE TO PAY ON

208 Division Docket, Volume IV, pp. 1483-1492.
209 Id., pp. 1646-1656.
210 The exhibit is described as "E2M System print-out of the Single Administrative Documents pertaining to Petitioner's rice import shipments subject of this case" but the document actually marked is an E2M Manifest – Waybill pertaining to BL No. HDMUBKML0979391, id., p. 1495.
211 Id., pp. 1660-1661.
212 Id., pp. 1669-1707.
213 *See* Order dated 26 May 2021, id., p. 1711.
214 Id., pp. 1712-1740.
215 *See* Resolution dated 28 June 2021, id., p. 1745.
216 JSFI, supra at note 170.

12 JANUARY 2019 (SATURDAY) AND THE DECREES OF ABANDONMENT ON 14 JANUARY 2019 (MONDAY);

I.B
WHETHER THE DECREES OF ABANDONMENT WERE VALIDLY AND LAWFULLY ISSUED;

I.C
WHETHER THE DECREES OF ABANDONMENT HAVE BECOME FINAL; AND,

II.
WHETHER THE LAND BANK OF THE PHILIPPINES (LANDBANK) DEBIT ADVICES ARE CONSIDERED PAYMENT OF THE CUSTOMS DUTIES FOR PETITIONER VICTOR R. DEL ROSARIO RICE MILL CORPORATION'S RICE IMPORTATIONS.

ARGUMENTS

In support of the above issues, petitioner advances the following arguments:

As to the *first main issue*, petitioner contends that respondent Customs Commissioner Guerrero's assailed Consolidated Order[217] and Resolution[218] should be reversed and set aside because, *firstly*, it was denied due process of law when respondent MICP District Collector issued the "Notice to Pay"[219] on 12 January 2019 and the Decrees of Abandonment[220] on 14 January 2019.

Citing Sections 1129(b), (c) and (d) of the CMTA and the relevant provisions of CMO No. 16-2019[221], petitioner argues that the "Notice to Pay"[222] not duly served *via* electronic service as there was no acknowledgment of receipt thereof by it and neither did respondents execute an affidavit of service. Since there is no proof that it received the said 12 January 2019 "Notice to Pay", petitioner thus claims that it was deprived of its right to be notified, in violation of its right due process. It also contends that the subsequent Decrees of

[217] Supra at note 4.
[218] Supra at note 6.
[219] Supra at note 45.
[220] Supra at note 49.
[221] Supra at note 205.
[222] Supra at note 45.

Abandonment[223] issued without such prior notice likewise violated its right to due process. Petitioner further claims that authenticity of the said 12 January 2019 "Notice to Pay" is suspicious given that it does not contain respondent BOC's letterhead and seal as well as the MICP District Collector's signature.

Secondly, petitioner insists that the Decrees of Abandonment[224] were null and void for respondents' failure to provide due notice to petitioner as aforesaid. Even assuming that there was valid service of the notice of abandonment, there can be no implied abandonment under Section 1129 of the CMTA considering that: (1) petitioner filed the goods declaration; and, (2) petitioner deposited the customs duties and taxes, as evidenced by the Debit Advices, in accordance with the rules of respondents. According to petitioner, it cannot be faulted if respondents unjustifiably refused to apply the alleged unpaid customs duties against its deposits or advance payments.

Further, petitioner points out that it is a customary practice for respondent BOC to allow the importer to claim the shipment even if it is already decreed abandoned. Citing Section 1130[225] of the CMTA and various jurisprudence deeming it appropriate to disregard technicalities in line with giving life to the spirit of the law, petitioner argues that the intent and spirit of the CMTA allows an importer to reclaim the shipment even if respondents have already decreed implied abandonment, or even after the auction sale, to recover the proceeds thereof.

Thirdly, the Decrees of Abandonment[226] have not become final because petitioner correctly and timely filed the present Petition for Review. Contrary to respondents' contention, petitioner maintains that respondent Customs Commissioner Guerrero's assailed Consolidated Order[227] is already the decision of respondent Customs Commissioner Guerrero on its Letter-Appeals filed on 24 January

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223 Supra at note 49.
224 Supra at note 49.
225 **SEC. 1130**. *Treatment and Disposition of Abandoned Goods.* — …
226 Supra at note 46.
227 Supra at note 4.

2019[228] (with respondent MICP District Collector Austria) and on 25 January 2019[229] (with respondent Customs Commissioner Guerrero).

Petitioner adds that the assailed Consolidated Order[230] itself states that it is a "review" of respondent MICP District Collector Austria's Order dated 27 February 2019[231], "which jointly resolved the Motions for Reconsideration of various consignees on the series of Decrees of Abandonment dated 14 January 2019." Thus, filing a separate appeal with respondent Customs Commissioner Guerrero, as respondents suggested, will result in the absurd situation of filing a second appeal as, surely, respondent Customs Commissioner Guerrero will dismiss such second appeal.

As to the *second main issue*, petitioner argues that the LandBank Debit Advices should be construed as payment of the assessed customs duties for petitioner's rice importations. It puts forward two (2) reasons therefore: (1) respondents failed to specifically deny the allegations in the present Petition for Review bearing upon the existence of the said LandBank Debit Advices; and, (2) the amounts covered by the LandBank Debit Advices are advance payments for the assessed customs duties for petitioner's rice importations (a pre-requisite to the issuance of Import Permits by the NFA) have already been debited from petitioner's accounts and credited to respondent BOC's account.

On the other hand, in their Memorandum, respondents contend that petitioner was not denied due process as it was duly notified of its tax deficiencies prior to the issuance of the Decrees of Abandonment.

According to respondents, Section 1129 of the CMTA pertinently provides that notification to the importer to lodge or file, pay, claim, or mark by the District Collector may be done through electronic notice sent to the registered email address of concerned accredited importers or exporters. Moreover, CMO No. 16-2019[232], which clarified the notice requirement under Section 1129 of the CMTA, essentially states in

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228 Supra at note 71.
229 Supra at note 84.
230 Supra at note 4.
231 Supra at note 5.
232 Supra at note 205.

Paragraph 2 that electronic service may only apply to regular importers, such as petitioner, and specifically states in Paragraph 6 that electronic service is complete upon successful sending of a notice *via* internet to the designated email address of the owner, importer, consignee, or interested party. Consistent therewith, respondents cited Paragraph 4.4.1.a[233] of Customs Administrative Order (**CAO**) No. 17-2019[234], which affirmed that rule that electronic service is complete upon successful sending of a notice *via* internet to the designated email address of the accredited importer notwithstanding its failure to acknowledge the duly sent notice.

Contrary to petitioner's contention that it was not notified of the abandonment proceedings, respondents maintain that COO Palaganas' testimony clearly shows that the subject "Notice to Pay"[235] was sent to petitioner's registered email address (*i.e.*, vdrm corp@yahoo.com) through respondent's official email address (*i.e.*, micp@customs.gov.ph). In the said "Notice to Pay", petitioner was notified and directed to pay the outstanding customs duties and taxes for the subject rice shipments immediately; otherwise, the same shall be deemed abandoned pursuant to Section 1129(c)[236] of the CMTA.

As regards the Decrees of Abandonment[237] declaring petitioner's rice import shipments as "deemed abandoned", respondents argue that

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233 **4.4.1. For Accredited Importers:**

a. The required notice shall be sent to the registered email submitted to the Account Management Office (AMO) or its equivalent office.

No electronic mail address shall be recognized other than those registered with the AMO or its equivalent office, unless duly changed, modified and updated by the accredited importer with the same office.

Accredited importers must acknowledge receipt of notices and communications duly sent to their respective registered electronic mail addresses.

Notwithstanding their failure to acknowledge duly sent notices and communications to the accredited importer's registered electronic mail address, the same shall be deemed received upon successful transmittal thereof.

In case the electronic mail address provided by the consignee to AMO or equivalent office is incorrect or non-existent, all notices and communications sent to said incorrect or non-existent electronic mail address, shall be deemed received by the consignee[.] (Underscoring supplied.)

234 ABANDONMENT: KINDS, EFFECTS, AND TREATMENT.

235 Supra at note 45.

236 Supra at note 48.

237 Supra at note 49.

the same were validly issued in accordance with Section 1129(c)[238] of the CMTA.

Citing Section 1129(c)[239], in relation to Sections 117[240] and 406[241], of the CMTA, which requires an importer to lodge or file an entry declaration within 15 days from unloading and pay the assessed customs duties and taxes within 15 days from the date of final assessment, respondents justified the declaration of implied abandonment of petitioner's rice import shipments on the following grounds:

> (1) **Abandoned Rice Import Shipment with BL No. HDMUBKML0975857:** Petitioner's failure to lodge or file the goods declaration within 15 days, or within the approved extended period of another 15 days, from notice of the date of discharge of the last package from the vessel; and,
>
> (2) **Abandoned Rice Import Shipments with BL Nos. HDMUBKML0979391, ONEYSGNU83956600, ASC0185360, HDMUBKML0975915, ONEYSGNU77223300, EGLV050800801314, EGLV050800911462, EGLV050800911454, COAU7130774950, EGLV050800911471, ONEYSGNU77907500, 550810057348, CAOU7205325320 and SGNCB18011703:** Petitioner's failure to pay the assessed duties and taxes within 15 days from receipt of the notice of final assessment.

Respondents also point out that, since petitioner is a regular rice importer, it falls under the category of a knowledgeable importer who is presumed to know the arrival of its shipments and, thus, is expected to pay the assessed duties, taxes and other charges on its rice import shipments within 15 calendar days from receipt of the notice of final assessment (in the manner provided in the CMTA and pertinent rules and regulations). However, despite due notice, petitioner still failed to pay the required customs duties and taxes.

Respondents thus insist that MICP District Collector Austria properly initiated the abandonment proceedings against petitioner's

[238] Supra at note 48.
[239] Supra at note 48.
[240] Supra at note 154.
[241] Supra at note 155.

rice import shipments, and he was well within his right to issue the Decrees of Abandonment for the abovementioned grounds. On the other hand, respondent Customs Commissioner Guerrero properly confirmed the same in his assailed Consolidated Order.[242]

Respondents add that since petitioner failed to file an appeal within 15 days from receipt of respondent Customs Commissioner Guerrero's assailed Consolidated Order[243], respondent MICP District Collector Austria's Decrees of Abandonment[244] (declaring the rice import shipments from March to September 2018 "deemed abandoned" for non-filing of entry declaration and failure to pay the required customs duties and taxes within the allowable period) have become final and executory as early as 18 May 2019. Counting 15 days from 03 May 2019 or the date when petitioner allegedly received a copy of the assailed Consolidated Order, the aforesaid Decrees of Abandonment have indubitably attained finality.

Lastly, respondents assert that a LandBank Debit Advice is not a payment of customs duties for petitioner's rice import shipments but a mere regulatory requirement of the NFA for the issuance of rice import permits. According to them, their witness Rumbaoa testified that the debits against petitioner's LandBank account were not for payment of customs duties for the subject rice import shipments. Specifically, LandBank Debit Advice dated 27 July 2018 and LandBank Debit Advice dated 09 January 2018 are inconclusive evidence to prove payment of customs duties for the subject rice import shipments as such merely show the deduction of certain amounts from petitioner's LandBank account, earmarked for payment of customs duties when assessment notices are issued. Furthermore, such amounts are not immediately credited to respondent BOC's accounts, but are only credited when payments are made.

Respondents further noted that the best evidence of payment of the customs duties is the "Payment Confirmation" transmitted by LandBank to the E2M Customs database pursuant to Section 4.2.4[245] of

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242 Supra at note 4.
243 Supra at note 4.
244 Supra at note 49.
245 **4.2 Final Payment**

...

CAO No. 10-2008[246]. However, petitioner miserably failed to present such document to prove payment of the customs duties for the rice import shipments subject of the present case. According to respondents, had petitioner paid the customs duties for the subject rice import shipments, the corresponding Payment Confirmations would have been transmitted by LandBank to the E2M Customs database. There being no proof of such payments, respondents aver that they properly declared the subject rice import shipments of petitioner as deemed abandoned under Section 1129 of the CMTA for non-payment of customs duties.

RULING OF THE COURT

Before the Court proceeds to address the above issues, it deems propitious to first determine the timeliness of petitioner's appeal as this is determinative of this Court's jurisdiction.

THE COURT LACKS JURISDICTION OVER THE PRESENT CASE.

Respondents argue that the assailed Consolidated Order[247] has become final and unappealable because petitioner failed to appeal the same to respondent Customs Commissioner Guerrero, within 15 days from receipt thereof on 03 May 2019, or until 18 May 2019, pursuant to Section 114[248] of the CMTA.

Petitioner, on the other hand, contends that since the assailed Consolidated Order[249] was already the decision of respondent Customs Commissioner Guerrero on petitioner's Letter-Appeals filed on 24 January 2019[250] (with respondent MICP District Collector Austria) and on 25 January 2019[251] (with respondent Customs Commissioner

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4.2.4 Transmittal of Payment Confirmation. In all cases of payment instructions received, the AABs should complete the collection and thereafter transmit a **payment confirmation** to the electronic gateway payment **unless there is no sufficient balance in the debit account.** (Emphasis supplied.)

246 Payment Application Secure System Version 5.0 (PASS5).

247 Supra at note 4.

248 **SEC. 114**. *Right of Appeal, Forms and Ground.* – ...

249 Supra at note 4.

250 Supra at note 71.

251 Supra at note 84.

Guerrero), there is no need to appeal the denial again before him, *i.e.*, a second appeal, and the proper recourse is for petitioner to file a Petition for Review before this Court.

We agree with respondents.

Sections 1136 and 1137 of the CMTA provide:

...

SEC. 1136. *Review by the CTA.* — Unless otherwise provided in this Act or by any other law, the party aggrieved by the **ruling or decisions of the Commissioner** may appeal to the CTA, **<u>in the manner and within the period prescribed by law and regulations</u>**. Decisions of the Secretary of Finance when required by this Act, may likewise be appealed to the CTA.

Unless an appeal is made to the CTA in the manner and <u>within the period prescribed by law and regulations</u>, the ruling or decision of the Commissioner or the Secretary of Finance shall be final and executory.

SECTION 1137. *Exclusive Jurisdiction of the Bureau.* — Jurisdiction over imported goods and goods for exportation shall be **exclusive to the Bureau**, or the Secretary of Finance, when under review by the latter, subject to the proceedings described in this title.[252]

...

Corollarily, Section 7 of RA 1125[253], as amended by RA 9282[254], provides the exclusive appellate jurisdiction of this Court to review by appeal the decision of the Commissioner of Customs (**COC**), as follows:

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252 Emphasis supplied.

253 AN ACT CREATING THE COURT OF TAX APPEALS.

254 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

...

Sec. 7. *Jurisdiction*. — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

...

(4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.][255]

...

Moreover, Section 114 of the CMTA provides:

...

SEC. 114. *Right of Appeal, Forms and Ground*. — **Any party adversely affected by a decision or omission of the Bureau** pertaining to an importation, exportation, or any other legal claim shall have the right to appeal **<u>within fifteen (15) days from receipt of the questioned decision or order</u>**.

An appeal in writing shall be filed within the period prescribed in this Act or by regulation and **shall specify the grounds thereof**.

The Bureau may allow a reasonable time for the submission of supporting evidence to the appeal.[256]

...

Based on the foregoing provisions, We will examine whether respondent Customs Commissioner Guerrero's assailed Consolidated Order[257] is the one contemplated by law and regulations as appealable and reviewable by this Court.

Firstly, petitioner did not file an appeal before respondent Customs Commissioner Guerrero. It is undisputed that, on 24 January

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[255] Emphasis supplied.
[256] Emphasis and underscoring supplied.
[257] Supra at note 4.

2019, petitioner filed a Letter-Appeal[258] with respondent MICP District Collector Austria to lift the Decrees of Abandonment[259] issued against its rice shipments [*i.e.*, 13 (out of the 15) rice import shipments with BL Nos. ONEYSGNU83956600, ASC0185360, HDMUBKML0975915, ONEYSGNU77223300, EGLV050800801314, EGLV050800911462, EGLV050800911454, COAU7130774950, EGLV050800911471, ONEYSGNU77907500, 550810057348, CAOU7205325320 and HDMUBKML0975857, subject of this case, plus three (3) other rice import shipments with BL Nos. HDMUBKML0979878, ASC0185365 and 550810057300]. Moreover, on 25 January 2019, **petitioner's customs brokers**, LCB Albert John P. Unica (**LCB Unica**) and LCB Delos Reyes, filed separate Letter-Appeals[260] with respondent Customs Commissioner Guerrero, asking the latter to lift the Decrees of Abandonment[261] and release the rice import shipments subject of this case [*i.e.*, **LCB Unica's Letter-Appeal**: **eight (8)** (out of the 15) **rice import shipments** with BL Nos. ONEYSGNU83956600, ASC0185360, ONEYSGNU77223300, EGLV050800801314, EGLV050800911462, EGLV050800911454, COAU7130774950 and EGLV050800911471; **LCB Delos Reyes' Letter-Appeal**: **six (6)** (out of the 15) **rice import shipments** with BL Nos. HDMUBKML0975915, ONEYSGNU77907500, 550810057348, CAOU7205325320, SGNCB18011703 and HDMUBKML0975857].

However, the aforesaid Letter-Appeals[262] filed by LCBs Unica and Delos Reyes, on petitioner's behalf, may not be considered as the appeal contemplated under CMO No. 18-2014[263], the guidelines for lifting an abandonment order on import shipments applicable at that time (prior to its repeal through CMO No. 17-2019[264] which was dated and signed on 25 April 2019), which provides:

> ...
>
> SECTION 3. **Only the Commissioner of Customs** is authorized to:
>
> a. Defer or delay abandonment proceedings.

[258] Supra at note 71.
[259] Supra at note 49.
[260] Supra at note 84.
[261] Supra at note 49.
[262] Supra at note 84.
[263] Guidelines on Lifting an Order of Abandonment.
[264] Guidelines on the Recall/Lifting/Reconsideration/Setting Aside of Any Order/Decree/Decision of Abandonment, 15 April 2019.

b. Lift any abandonment order.

SECTION 4. **All requests for deferral or delay in abandonment proceedings or lifting of any abandonment order <u>must</u> be done in writing by the <u>Consignee</u>** and sent directly to the Commissioner for approval. The Consignee should also send copies of such a request to the District Collector at the port of discharge. If the port of discharge is a sub-port, the Consignee should send such copies to the Sub-Port Collector and the District Collector who has jurisdiction over that sub-port.

SECTION 5. Any such request **<u>should</u> contain the following information**:

a. Name of Consignee
b. TIN # of Consignee
c. Date of discharge of shipment
d. Registry Number
e. Bill of Lading Number
f. Port of Discharge
g. Description of Contents
h. If entry was filed:
  i. Date of filing of entry; and
  ii. Entry number
i. Reason why lifting of abandonment is sought
j. Documents to attach:
  i. Copy of bill of lading; and
  ii. If entry was not filed in e2m: copy of IEIRD[265]

...

It bears noting that the Letter-Appeals[266] filed with respondent Customs Commissioner Guerrero were sent by petitioner's customs brokers, LCBs Unica and Delos Reyes, and cover shipments of other clients of said customs brokers. Moreover, said Letter-Appeals do not contain the Tax Identification Number (TIN) of petitioner, date of discharge of shipments, registry numbers, the date of filing of the import entries and the entry numbers, nor were copies of the BLs attached thereto, in violation of the afore-quoted provisions of CMO No. 18-2014.[267]

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265 Emphasis and underscoring supplied.
266 Supra at note 84.
267 Supra at note 262.

In addition, petitioner subsequently filed Motions to Recall[268] before respondent MICP District Collector Austria on 31 January 2019. As such, no appeal may be deemed to have been filed before respondent Customs Commissioner Guerrero since, at the time the said Letter-Appeals[269] were filed or on 25 January 2019, the abandonment proceedings for the rice import shipments referred to in petitioner's Motions to Recall were still pending before respondent MICP District Collector Austria.

Secondly, the assailed Consolidated Order[270] was not issued to resolve the Letter-Appeals[271] previously sent by petitioner's customs brokers to respondent Customs Commissioner Guerrero. A thorough review of the assailed Consolidated Order would reveal that it was a mere confirmation or affirmation of respondent MICP District Collector Austria's Order dated 27 February 2019[272], in accordance with CMO No. 17-2019[273], to wit:

> ...
>
> In the absence of a clear and specific provision under the Customs Modernization and Tariff Act (CMTA) of 2016, on resolving a Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree of Abandonment issued by the District Collector having jurisdiction over the goods/shipments, the following guidelines shall be observed:
>
> 1. **The District Collector shall strictly observe/comply with the implementation of Section 1129 of the CMTA (*Abandonment, Kinds and Effects of*) in relation to Section 407 (*Goods Declaration and Period of Filing*) thereof.**
>
> 2. The District Collector may initiate and decide abandonment proceedings that may result in the issuance of an Order/Decree/Decision of abandonment upon strict compliance with the notices required under Sections 1129 and 407 of the CMTA and Customs Memorandum No. 16-2019, *(Guidelines on The Sending of Notice under Section*

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268 Supra at note 72.
269 Supra at note 84.
270 Supra at note 4.
271 Supra at note 84.
272 Supra at note 5.
273 Supra at note 263.

> *1129 (Abandonment, Kinds and Effects)* dated 18 March 2019].
>
> 3. In case the District Collector issues an Order/Decree/Decision of Abandonment, the aggrieved party may file a written Motion to Recall/Lift/Reconsider/Set Aside with the District Office that issued the same within a period of fifteen (15) days from receipt thereof. The motion shall specifically state the grounds relied upon and the timeliness of the filing thereof.
>
> 4. The District Collector shall have the authority to resolve any Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment within a period five (5) working days from its filing. **Thereafter, the District Collector shall transmit to the Office of the Commissioner for confirmation his/her Decision within two (2) days from promulgation/issuance thereof.**
>
> 5. **The Decision of the District Collector duly confirmed by the Office of the Commissioner shall become final and executory within fifteen (15) days from receipt by the owner/importer/consignee of the questioned Order/Decree/Decision <u>unless appealed to the Commissioner in the manner and time specified in Section 114 of the CMTA, which allows appeal</u>** from any decision/omission of the Bureau pertaining to an importation, exportation, or any legal claim.
>
> 6. The appeal shall set forth new/specific arguments/grounds not raised in the Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment and with arguments which were simply glossed over, overlooked and/or not treated at all in the appealed Decision.[274]

...

Evidently, nowhere in the assailed Consolidated Order[275] was there a mention of an appeal filed by petitioner before respondent Customs Commissioner Guerrero, to wit:

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[274] Emphasis and underscoring supplied, and italics in the original text.
[275] Supra at note 4.

...

CONSOLIDATED ORDER

For review is the Order dated 27 February 2019 of the District Collector, Manila International Container Port (MICP) which jointly resolved the Motions for Reconsideration of various consignees on the series of Decrees of Abandonment dated 14 January 2019 covering shipments said to contain White Rice, 5% Broken, the dispositive portion of which states:

> "**WHEREFORE** premises considered, by authority vested in me by law, the Decree of abandonment are hereby **AFFIRMED** covering the subject shipments without prejudice to claimant's right to appeal to the Customs Commissioner pursuant to Section 3 of CMO No. 18-2014 (Guidelines on Lifting and Order of Abandonment)
>
> Let a copy of this Order be furnished all parties and Offices concerned for their information and guidance.
>
> **SO ORDERED.**"

Culled from the records, the following are the antecedent facts of the instant abandonment cases, to wit:

...

6. On 31 January 2019, the consignees filed their Motions for Reconsideration on the Decrees of Abandonment issued by the MICP District Collector.

7. On 27 February 2019, the MICP District Collector issued a consolidated Order denying consignees' Motions for Reconsideration. Hence, this review.

ISSUE:

Whether or not the order of the district collector is pursuant to law.

DISCUSSION:

...

WHEREFORE, premises considered, the Order dated 27 February 2019 of the MICP District Collector affirming the Decree of Abandonment over the subject rice shipments is hereby **AFFIRMED**.

SO ORDERED.

Manila; ____________, 2019.

(Sgd.)
REY LEONARDO B. GUERRERO
Commissioner, BOC[276]

...

Lastly, even though petitioner did not receive a copy of respondent MICP District Collector Austria's Order dated 27 February 2019[277], as testified by Maniego in his Judicial Affidavit[278], and it only received the assailed Consolidated Order[279] issued by respondent Customs Commissioner Guerrero on 02 May 2019, as evidenced by the Affidavit of Service[280] executed by respondent BOC's Legal Assistant, Bernabe G. Mendoza, Jr. (**Mendoza**), the dispositive portion of respondent MICP District Collector Austria's Order dated 27 February 2019[281] was made an indispensable part of the assailed Consolidated Order.

Considering that petitioner had pending Motions to Recall[282] before respondent MICP District Collector Austria anent the Decrees of Abandonment[283] and the existing rules and regulations[284] require an appeal before respondent Customs Commissioner Guerrero before judicial review, simple logic would dictate that respondent Customs Commissioner Guerrero's assailed Consolidated Order[285] was just an affirmation or confirmation of respondent MICP District Collector Austria's Order dated 27 February 2019[286], in accordance with CMO No. 17-2019[287], and is not the decision appealable and reviewable by this Court.

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276 Emphasis in the original text and underscoring supplied.
277 Supra at note 5.
278 Supra at note 68.
279 Supra at note 4.
280 BOC Records, Folder 2, pp. 743-744.
281 Supra at note 5.
282 Supra at note 72.
283 Supra at note 49.
284 Customs Memorandum Order (CMO) No. 17-2019, supra at note 263.
285 Supra at note 4.
286 Supra at note 5.
287 CMO No. 17-2019, supra at note 263.

Based on the foregoing, petitioner should have filed an appeal before respondent Customs Commissioner Guerrero on or before 17 May 2019, which is 15 days from petitioner's receipt of the Consolidated Order on 02 May 2019 (based on Mendoza's Affidavit of Service[288]). This omission on petitioner's part is fatal to its case as, by the time petitioner filed the present Petition for Review[289] before this Court on 21 May 2019, the assailed Consolidated Order[290] had long become final and executory. It bears stressing that the decision of the COC, if not timely protested and appealed by the importer to the COC, becomes final not only as to the importer but against the Government as well.[291] Thus, the present Petition for Review must necessarily fail.

Settled is the rule that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, that has to be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[292]

Furthermore, since this Court is a court of limited jurisdiction, its jurisdiction to take cognizance of a case should be clearly conferred and should not be deemed to exist on mere implication.[293]

NO DENIAL OF DUE PROCESS IN THE CONDUCT OF THE ABANDONMENT PROCEEDINGS.

Contrary to petitioner's allegation that it was denied due process of law since there is no proof that it received respondent MICP District Collector's 12 January 2019 "Notice to Pay"[294] sent *via* email on a Saturday plus the fact that the Decrees of Abandonment[295] were issued two (2) days thereafter, or on 14 January 2019, the Court is inclined to

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288 Supra at note 279.
289 Supra at note 1.
290 Supra at note 4.
291 *Sy Man v. Jacinto, et al.*, G.R. No. L-5612, 31 October 1953.
292 *Canton, et al. v. City of Cebu, et al.*, G.R. No. 152898, 12 February 2007.
293 *Southern Cross Cement Corp. v. The Philippine Cement Manufacturers Corp., et al.*, G.R. No. 158540, 08 July 2004.
294 Supra at note 45.
295 Supra at note 49.

agree with respondents' assertions that: (1) petitioner was duly notified of its tax deficiencies *via* electronic service, deemed "completed" upon successful sending of the email notice to its registered email address and "received" even without an acknowledgment receipt; and, (2) since petitioner is a regular rice importer, it falls under the category of a knowledgeable importer, who is presumed to know the arrival of its shipments, and thus, is expected to pay the assessed duties, taxes and other charges on its rice import shipments, within 15 calendar days from receipt of the notice of final assessment, in the manner provided in the CMTA and pertinent rules and regulations.

As respondents cited correctly, the due notice requirement under Section 1129 (last paragraph) of the CMTA and Section 4.4 of CAO No. 17-2019 clearly provide that notice to a regular importer to lodge or file, pay, claim, or mark may be done *via* electronic notice sent to the registered email address of concerned accredited importers or exporters, *viz*:

<u>Section 1129 of the CMTA</u>

> ...
> **SEC. 1129**. *Abandonment, Kinds and Effects of.* — Imported goods are deemed abandoned under any of the following circumstances:
> ...
>
> (c) Having filed such goods declaration, <u>the owner, importer, consignee or interested party after due notice</u>, fails to pay the assessed duties, taxes and other charges thereon, or, if the regulated goods failed to comply with Section 117 of this Act, within fifteen (15) days from the date of final assessment: Provided, That if such regulated goods are subject of an alert order and the assessed duties, taxes and other charges thereof are not paid within fifteen (15) days from notification by the Bureau of the resolution of the alert order, the same shall also be deemed abandoned; or
> ...
>
> <u>The due notice requirement under this section may be provided by the Bureau through electronic notice</u> or personal service: *Provided,* That for non-regular importers, notification shall be by registered mail or personal service. For this purpose, the

accreditation of importers, exporters, and other third parties shall include provision for mandatory receipt of electronic notices.[296]

...

<u>Section 4.4 of CAO No. 17-2019</u>

...

Section 4. <u>General Provisions</u>. Imported goods are deemed abandoned in the following circumstances:

4.4 Due Notice Requirement. The due notice requirement is complied with as follows:

4.4.1. For Accredited Importers:

a. *The required notice shall be sent to the registered email submitted to the Account Management Office (AMO) or its equivalent office.*

No electronic mail address shall be recognized other than those registered with the AMO or its equivalent office, unless duly changed, modified and updated by the accredited importer with the same office.

Accredited importers must acknowledge receipt of notices and communications duly sent to their respective registered electronic mail addresses.

Notwithstanding their failure to acknowledge duly sent notices and communications to the accredited importer's registered electronic mail address, the same shall be deemed received upon successful transmittal thereof.

In case the electronic mail address provided by the consignee to AMO or equivalent office is incorrect or non-existent, all notices and communications sent to said incorrect or non-existent electronic mail address, shall be deemed received by the consignee.[297]

...

Applying the foregoing and as the records confirm, the subject 12 January 2019 "Notice to Pay"[298] sent *via* email to petitioner's registered email address (*i.e.*, <u>vdrm_corp@yahoo.com</u>) through respondent's

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[296] Italics in the original text and underscoring supplied.
[297] Emphasis and underscoring in the original text, and italics supplied.
[298] Supra at note 45.

official email address (*i.e.*, micp@customs.gov.ph) sufficiently complies with the due notice requirement under the aforequoted rules. Petitioner need not acknowledge the same as it is deemed received upon successful transmittal thereof.

Even assuming that the said unacknowledged 12 January 2019 "Notice to Pay" does not satisfy the due notice requirement, it must also be considered that, since petitioner has filed the required import entry declarations (*i.e.*, SADs) for the 14 shipments subject of this case and the fact that it is regular importer, it is not unfamiliar with and actually presumed to know the pertinent procedures, rules and regulations observed or followed in the release of importations, particularly, that it must pay the assessed duties and taxes within 15 days from receipt of the corresponding notices of final assessment.

The Supreme Court has held in *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*[299] that a regular importer falls under the category of a knowledgeable importer who is presumed to know the arrival of its shipments, *viz*:

> ...
>
> **Petitioner, a regular, large-scale and multinational importer of oil and oil products, fell under the category of a knowledgeable importer which was familiar with the governing rules and procedures in the release of importations.**
>
> **Furthermore, notice to petitioner was unnecessary because it was fully aware that its shipments had in fact arrived in the Port of Batangas.** The oil shipments were discharged from the carriers docked in its private pier or wharf, into its shore tanks. From then on, petitioner had actual physical possession of its oil importations. It was thus incumbent upon it to know its obligation to file the IEIRD within the 30-day period prescribed by law. As a matter of fact, importers such as petitioner can, under existing rules and regulations, file in advance an import entry even before the arrival of the shipment to expedite the release of the same. However, it deliberately chose not to comply with its obligation under Section 1301.
>
> ...

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299 G.R. No. 178759, 11 August 2008; Emphasis supplied.

As can be gleaned from the table below, which summarizes the relevant details gathered from the SADs[300] (all of which were admitted, except Exhibit "R-2") and testified to by respondents' witness, Nitura, petitioner was duly notified of its unpaid customs duties, taxes and other charges on the 14 shipments subject of this case:

No.	BL No.	Date of Arrival	Entry No. (SAD)	Date of Declaration	Dutiable Value	Assessed Duties	Date of Assessment	AP No.	Exhibit No.
1	HDMUBKML0979391	Not indicated	C-285662	17-Oct-18	₱18,431,173.00	₱6,461,398.00	11-Nov-18	262-2018	"R-2"
2	ONEYSGNU83956600	27-Sep-18	C-266313	30-Sep-18	13,035,498.00	4,569,121.00	30-Sep-18	090-2019	"R-3"
3	ASC0185360	10-Mar-18 and 27-Sep-18	C-266303	30-Sep-18	15,561,514.00	5,454,312.00	30-Sep-18	092-2019	"R-4"
4	HDMUBKML0975915	16-Sep-18	C-266321	30-Sep-18	45,624,244.00	15,988,762.00	30-Sep-18	103-2019	"R-5"
5	ONEYSGNU77223300	27-Sep-18	C-266308	30-Sep-18	13,035,498.00	4,569,121.00	30-Sep-18	087-2019	"R-6"
6	EGLV050800801314	27-Sep-18	C-266315	30-Sep-18	12,597,272.00	4,415,742.00	30-Sep-18	089-2019	"R-7"
7	EGLV050800911462	27-Sep-18	C-74891	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	094-2019	"R-8"
8	EGLV050800911454	27-Sep-18	C-266339	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	091-2019	"R-9"
9	COAU7130774950	13-Sep-18	C-266334	30-Sep-18	16,325,395.00	5,721,943.00	30-Sep-18	086-2019	"R-10"
10	EGLV050800911471	10-Mar-18	C-266328	30-Sep-18	12,550,012.00	4,399,201.00	30-Sep-18	088-2019	"R-11"
11	ONEYSGNU77907500	27-Sep-18	C-266333	30-Sep-18	19,553,247.00	6,853,049.00	30-Sep-18	093-2019	"R-12"
12	550810057348	13-Sep-18	C-251192	17-Sep-18	11,547,932.00	4,048,433.00	18-Sep-18	255-2018	"R-13"
13	CAOU7205325320	17-Mar-18	C-74891	20-Mar-18	9,238,181.00	3,239,051.00	10-Aug-18	244-2018	"R-14"
14	SGNCB18011703	23-Sep-18	C-285673	17-Oct-18	13,790,718.00	4,835,072.00	28-Nov-18	116-2019	"R-15"

Given that despite due notice (through electronic notice and by virtue of the presumption of notice attributed to a regular importer), petitioner still failed to pay the required customs duties and taxes within the 15-day period prescribed under Section 1129(c)[301] of the CMTA and immediately after the successful transmittal of the email "Notice to Pay"[302] deemed received by petitioner, it stands to reason that respondent MICP District Collector Austria was well within his right to issue the Decrees of Abandonment[303] against petitioner's rice import shipments for non-payment of customs duties and taxes.

By such reasons, petitioner's claim that respondents violated its right to due process in regard to the notice requirement prior to issuance of the Decrees of abandonment[304] has no leg to stand on.

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300 Supra at note 133.
301 Supra at note 48.
302 Supra at note 45.
303 Supra at note 49.
304 Supra at note 49.

In sum, following petitioner's failure to file an appeal with respondent Customs Commissioner Guerrero within 15 days from its receipt of the assailed Consolidated Order[305] on 02 May 2019, **the assailed Consolidated Order became conclusive and unappealable** on 17 May 2012. As a result, this Court is without jurisdiction to entertain the present Petition for Review.

Considering further that the assailed Consolidated Order[306] already attained finality and there is no denial of due process in the issuance of the 12 January 2019 "Notice to Pay"[307] and the subsequent Decrees of Abandonment[308], the Court finds no need to tackle the other issues raised by the parties.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by petitioner Victor R. del Rosario Rice Mill Corporation on 21 May 2019 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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[305] Supra at note 4.
[306] Supra at note 4.
[307] Supra at note 45.
[308] Supra at note 49.

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice