**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| THE BUREAU OF CUSTOMS AND THE COMMISSIONER OF CUSTOMS, *Petitioners,* | CTA EB No. 1566 (CTA CASE No. 8886) |
| -versus- | *Present*: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* |
| JADE BROS FARM AND LIVESTOCK, INC., *Respondent.* | Promulgated: APR 02 2019 1:21 p.m. |

x-------------------------------------------------------------x

## RESOLUTION

***MINDARO-GRULLA, J.:***

Before the Court *En Banc* is the Motion for Reconsideration[1] filed by the Bureau of Customs and the Commissioner of Customs (COC), seeking to set aside this Court's Decision promulgated on November 17, 2017,[2] the dispositive portion of which reads:

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

---

[1] *En Banc* Docket, pp. 723-757.
[2] *Ibid.*, pp. 151-177.

the Petition for Review filed by the Bureau of Customs and the Commissioner of Internal Revenue is hereby **DISMISSED.** The Assailed Resolutions are hereby **AFFIRMED.**

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

**SO ORDERED.**"

In their motion, the petitioners reiterate that the Court has no jurisdiction over the Petition for Review and that Jade Bros Farm and Livestock, Inc. (JBFLI) committed forum shopping.

In its Opposition[3] filed on January 30, 2019, JBFLI alleges that the Motion for Reconsideration filed by the COC is a mere *pro forma* as it does not point out the findings or conclusions in the Decision which are not supported by evidence. It emphasizes that it was wrong for the *ponente* to rely in the case on *Danilo Galang et. al. vs. the Bureau of Customs and Commissioner of Customs (the "Galang Case")*,[4] as it has not yet attained finality, nor is it on all fours in this case. Further, JBFLI hailed that the Court acquired jurisdiction over the case; that the filing of the Petition for Review does not constitute forum shopping; and that the decision of the Third Division already attained finality since the Motion for Reconsideration filed by the

---

[3] *Ibid.*
[4] CTA Case No. 8885, April 1, 2016.

ℓ

petitioners before the Court in Division was already stricken off the records and did not toll the prescriptive period to appeal.

This Court rules.

As to the contention that the Motion for Reconsideration of the petitioners was correctly stricken off the records by the Third Division, making its Resolution dated September 21, 2016 final, such was already extensively discussed upon in the assailed Decision and there is nothing for this Court to reverse.

As to the contention that the Motion for Reconsideration filed by the petitioners before this Court is *pro forma,* the mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion *pro forma*; otherwise, the movants' remedy would not be a reconsideration of the decision but a new trial or some other remedy.[5] Nevertheless, considering that the assailed Decision resulted in a tie in the votes of the magistrates of this Court, in the interest of substantial justice, the Motion should be resolved not on mere technicalities but based on the merits of this case.

As to this Court's jurisdiction, again, while the September 21, 2016 Resolution applied the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue,*[6] thus, exempting this case from the rule on exhaustion of administrative remedies, it must be emphasized that pursuant to Section 7 (a)(4) of Republic Act No. 9282, amending Republic Act No. 1125 and Section 3 of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, it is the decision of the Commissioner of Customs that falls within the jurisdiction of the Court of Tax Appeals in Division, to wit:

---

[5] *Siy vs. Court of Appeals*, 138 SCRA 536 (1985); *Continental Cement Corporation vs. Court of Appeals*, 184 SCRA 728 (1990).
[6] G.R. No. 175097, February 5, 2010.

L

"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:

xxx

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

This case involves seizure and forfeiture proceedings and nowhere in the Petition for Review before the Court in Division does it appear that the COC has issued any final decision or ruling on the seizure and forfeiture proceedings relating to JBFLI's seized rice shipments. Without justifiable reason to apply exception to the rule on exhaustion of administrative remedies, the Supreme Court is explicit that the filing of the petition for review before the Court of Tax Appeals is premature in the absence of a final decision of the Commissioner of Customs (COC).[7] The records are bereft of any evidence that the COC has issued a final decision or ruling on the seizure and forfeiture proceedings relating to petitioners' rice shipments. Accordingly, the Petition for Review before the Court in Division was prematurely filed and it did not acquire jurisdiction over the subject matter of this case.

Jurisdiction is conferred by law and is the capacity of a court to "entertain, hear, and determine certain controversies."[8] Jurisdiction over the subject matter or

---

[7] *Ace Publications, Inc. vs. The Commissioner of Customs, et al.,* G.R. No. L-18808, May 29, 1964; *Chia vs. Acting Collector of Customs, et al.,* G.R. No. L-43810, September 26, 1989.
[8] *Guy vs. Court of Appeals,* G.R. Nos. 165849, 170185, 170186, 171066 & 176650, December 10, 2007,539 SCRA 584.

*L*

nature of an action is fundamental for a court to act on a given controversy.[9] This Court, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.[10] If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[11] Considering that the COC had yet to render a decision on the seizure and forfeiture proceedings of JBFLI's rice shipments, the Petition for Review filed with the Court in Division was prematurely filed. The Court, as yet, had nothing to review.

While the rule in *Galang* cannot be considered as *stare decisis* since this Court is evidently aware that only Supreme Court decisions form part of the law of the land, nevertheless, decisions of other courts have persuasive effects.[12] The application of rulings in other cases is for the purpose of giving support to other decisions. Be that as it may, the issues herein are not decided solely by relying on the *Galang Case* as the assailed Decision is explicitly bombarded by factual and legal bases to justify its ruling, including citation of Supreme Court decisions in accordance with the principle of *stare decisis*. Even without the *Galang Case,* based on the antecedent facts and circumstances transpired herein, Supreme Court decisions and the laws reiterated in *Galang* would nonetheless apply in the case at bar.

As to the issue of forum shopping, records disclose that the complaint before the Regional Trial Court (RTC) Manila, and the Petition for Review before the Court in Division are undeniably comparable and that the reliefs sought for both are similar in nature, *i.e.,* to issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining the petitioners, all those acting for and in their behalf, and all their agents and responsible officers from implementing NFA Memorandum Circular No. A0-2K13-

---

[9] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 04, 2015, citing *Commissioner of Internal Revenue vs. Villa, et al.,* 130 Phil. 3, 4 (1968), cited in *B.W. Shipping Philippines, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 9115, May 7, 2018.
[10] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc.,* G.R. No. 169778, March 12, 2014, 718 SCRA 513.
[11] *Ibid.,* citing *Lt. Col. De Guzman vs. Judge Escalona,* 186 Phil. 431, 437-438 (1980).
[12] *United Coconut Planters Bank vs. Uy,* G.R. No. 204039, January 10, 2018.

L

003 as well as the NFA Council Resolution No. 670-2013-C, from seizing the incoming rice shipments of JBFLI, including those covered by the existing Bills of Lading, those which have recently landed, previously landed, those which are expected to arrive or will arrive after the filing of the Petition or during its pendency, and to make such writ of injunction permanent, thereby perpetually restraining the petitioners from committing the above-mentioned actions prejudicial to JBFLI with respect to the rice shipments upon declaration that the shipments are indeed legal. To reiterate:

> "There can be no dispute that the prayers for relief in the two cases were based on the same attendant facts. Both cases are founded on one statement of assertion that JBFLI has rice shipments subject to seizure and public auction by the BOC due to illegal importation.
>
> These similarities undoubtedly create the possibility of conflicting decisions from different courts.[13] These two actions boil down to a single issue, although the issues and reliefs prayed for may be stated differently, because the final disposition of one would constitute *res judicata* in the other.[14]
>
> The identity of parties is also evident as the parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.[15]
>
> As to identity of causes of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. As stated by the Supreme Court:
>
> > "This Court has laid down the test in determining whether or not the causes of action in the first and second cases are

---

[13] *Sps. Arevalo vs. Planters Development Bank*, G.R. No. 193415, April 18, 2012.
[14] *Galang, supra* note 9.
[15] *Goodland Company, Inc. vs. Asia United Bank et al.*, G.R. No. 195546 and G.R. No. 195561, March 14, 2012.

L

> identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action."[16]"

Both petitions question the validity of JBFLI's importation of rice and it follows that all pieces of evidence, *i.e.*, that the rice shipments were imported legally since NFA Memorandum Circular AO-2K13-03-003 is invalid, will support or establish JBFLI's causes of action in both cases. Even without *Galang,* based on the records of this case, both causes of action before the RTC and this Court involves the alleged nullity of NFA Memorandum Circular AO-2K13-03-003, which serves as the basis for the prayer for the TRO and Preliminary Injunction.

Even the imputation of different wordings or adding up of additional reliefs will not deny the presence of forum shopping in this case. The well-entrenched rule is that a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.[17] As stated in the assailed Decision, what is essential in determining the existence of forum shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.[18]

As to JBFLI's good faith, yet again, even without the *Galang Case,* the certification appended in the Petition for Review before the Court in Division still fell short of the requirement of the rule on forum shopping. While JBFLI disclosed the pendency of the Petition for Declaratory Relief

---

[16] *Ibid.,* citing *Villanueva vs. Court of Appeals,* G.R. No. 163433, August 22, 2011, 655 SCRA 707, 714, citing *Government Service Insurance System (GSIS) vs. Group Management Corporation (GMC),* G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 279, 313.
[17] *Goodland Company, Inc., supra* note 25, citing *Asia United Bank vs. Goodland Company, Inc.,* G.R. No. 191388, March 9, 2011, 645 SCRA 205, 216-217.
[18] *Sps. Arevalo vs. Planters Development Bank,* G.R. No. 193415, April 18, 2012, citing Lim v. Vianzon, 529 Phil. 472 (2006).

L

before the RTC-Manila, JBFLI's attestation that such is one seeking the nullity of NFA Memorandum Circular No. AO-2K13-03-003 and is entirely different and distinct from the Petition for Review before the Court in Division discloses that such certificate is partly false and misleading because the Petition for Declaratory Relief squarely raised the issue of the nullity of the REM, which was in fact the principal issue in this case. We reiterate the ruling of the Supreme Court in the case of *Goodland Company Inc. vs. Asia United Bank et al.,*[19] thus:

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

Under Section 5, Rule 7 of the Revised Rules of Court, willful and deliberate forum shopping is a ground for summary dismissal with prejudice, and shall constitute direct contempt and be a cause for administrative sanctions.

However, Section 2 of Republic Act No. 1125,[20] as amended by Republic Act No. 9503, provides:

> "SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings. –*
>
> xxx xxx xxx

[19] G.R. No. 195546 and G.R. No. 195561, March 14, 2012.
[20] An Act Creating the Court of Tax Appeals.

ℒ

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

Likewise, Section 3, Rule 2 of the 2005 RRCTA states that the presence at the deliberation and the affirmative vote of at least five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division. Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed, thus:

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

In the deliberation of the instant case, only Presiding Justice Roman G. del Rosario, Associate Justice Juanito C. Castañeda, Jr., and Associate Justice Catherine T. Manahan concurred with the opinion of the *ponente* that the assailed

L

Resolutions of the Court in Division should be reversed and set aside.

**WHEREFORE,** considering that the required affirmative votes of five (5) members of the Court en banc was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Motion for Reconsideration filed by the Bureau of Customs and the Commissioner of Internal Revenue, asking the Court en banc to reverse the ruling of the Court in Division, is hereby **DENIED.** The Assailed Decision is hereby **AFFIRMED.**

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
**Associate Justice**

WE CONCUR:

**(I reiterate my VOTE in my Concurring Opinion to ORDER respondent Jade Bros Farm and Livestock, Inc. and its counsel to SHOW CAUSE why they should not be liable for DIRECT CONTEMPT.)**
**ROMAN G. DEL ROSARIO**
**Presiding Justice**

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

**(With due respect, I vote to AFFIRM the assailed Resolutions of the Third Division dated September 21, 2016 and November 25, 2016.)**
**ERLINDA P. UY**
**Associate Justice**

**(I maintain my position in the assailed Decision of Court in Division.)**
**ESPERANZA R. FABON-VICTORINO**
**Associate Justice**

**(With due respect, I vote to AFFIRM the assailed Decision and Resolutions of the Third Division. I reiterate my Separate Opinion in the original Decision.)**
**MA. BELEN M. RINGPIS-LIBAN**
**Associate Justice**

**(I maintain my Concurring and Dissenting Opinion dated July 4, 2018.)**
**CATHERINE T. MANAHAN**
Associate Justice