REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PROGRESSIVE GRAINS MILLING CORP.,
Petitioner,

CTA CASE NO. 9847

- versus -

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated: NOV 18 2020

x-- x

8:30 a.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Progressive Grains Milling Corp. (**petitioner/PGMC**) pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal of the Decision dated 29 January 2018 of respondent Commissioner of Customs (**respondent/COC**) and his Order dated 19

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1 Filed on 04 June 2018, Division Docket, pp. 11-24.

2 **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction 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 [R]evenue 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.

April 2018, both of which denied petitioner's Offer of Settlement and forfeited in favor of the government 603.15 metric tons (**MT**) of White Rice consigned to petitioner.

PARTIES

Petitioner is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has its principal office at No. 111 Sta. Maria, San Jacinto, Pangasinan.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Customs (**BOC**) vested with the authority to carry out the functions and duties of said office, among which, is the enforcement of importation and tariff laws.

FACTS OF THE CASE

In 2016, petitioner was granted a Certificate of Eligibility[3] (**COE**) to import Nine Thousand Two Hundred Fifty (9,250) MT of Thai White Rice. Pursuant to the COE, it paid in advance all duties in the amount of ₱64,452,699.00.

The National Food Authority (**NFA**) also issued to petitioner an Import Permit[4] (**IP**) with IP No. MAV-2016-001, dated 15 December 2016, covering the importation of 7,200 MT of Thai White Rice from Benefields Developments Limited (**BDL**).

On 15 December 2016, the shipment of white rice arrived at Poro Point, La Union. The same was assessed and accordingly released to petitioner. However, prior to its exit from customs territory, Jose Guillermo, Acting Chief, Port Operations of the Port of San Fernando, La Union (**SFLU**), issued a Memorandum stopping the release of the rice upon discovery of *an excess of 603.15 MT* for being not covered by an IP.

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3 Division Docket, p. 42.
4 Id., p. 43.

In a Discrepancy Report[5], respondent was assessed customs duties for the excess rice shipment in the amount of ₱4,011,183.00, with a 30% fine equivalent to the shipment's landed cost amounting to ₱4,698,837.00 (for an aggregate amount of ₱8,711,285.00).

On 23 December 2016, petitioner requested an IP from the NFA. However, on 04 January 2017, the District Collector of La Union issued a Warrant of Seizure and Detention[6] (**WSD**) against the excess white rice in a case docketed as SFLU S.I. No. 01-2017.

Petitioner manifested its intention to settle and pay the assessed customs duties. Taking cue therefrom, the District Collector of SLFU rendered a Decision dated 19 June 2017.[7] The dispositive portion of the said Decision reads:

> ...
> **WHEREFORE**, premises considered, it is hereby RECOMMENDED that the Offer of Settlement of the respondent be GRANTED; Provided that, the respondent/consignee/importer shall present a valid import permit for the 603.15 M/T Thai White Rice 5% Broken prior to the payment of customs duties and fine equivalent to thirty percent (30%) of the landed cost and in addition pay storage fee charge thereof.
> ...

Thereafter, the above decision was forwarded to respondent for review. Meanwhile, the BOC Legal Service followed up and inquired from NFA about the status of petitioner's IP. In response, the NFA sent a letter[8] dated 29 August 2017. The letter states:

> ...
> With regard to your query on PGMC's [petitioner's] application for the required Import Permit of 600 MT shipment, please be informed that the evaluation process for the issuance of Import Permit may include the result of BOC seizure/offered for settlement case now pending with your Office. In the event that the resolution of its settlement case be available, may we request that

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5 Id., p. 39.
6 Id., p. 53.
7 Id., pp. 54-62.
8 BIR Records, p. 85.

> the NFA be provided a copy of this for further evaluation of our Legal Department.
>
> ...

In a Disposition Form dated 16 January 2018[9], the lawyer of BOC Legal Service assigned to petitioner's case recommended the reversal of the Collector of SLFU's decisions therefore, denying the latter's offer of settlement and forfeiting of the 603.15 MT of White Rice in favor of the government.

Acting on the recommendation of the BOC Legal Service, respondent rendered the assailed 29 January 2018 Decision.[10] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE,** premises considered, the Decision dated 19 June 2017 of the District Collector, Port of San Fernando, is **REVERSED**. Accordingly, the Offer of Settlement of claimant is **DENIED** and the shipment of 603.15 MT of White Rice consigned to PROGRESSIVE MILLING CORPORATION is **FORFEITED** in favor of the Government, to be disposed of in the manner provided by law.
>
> **SO ORDERED.**
>
> ...

Petitioner's motion for reconsideration[11] (**MR**) of the assailed Decision was likewise denied in respondent's Order[12] dated 19 April 2018.

PROCEEDINGS BEFORE THE COURT

On 04 June 2018, petitioner filed its Petition for Review (With Urgent Motion for Immediate Release of Subject Rice Shipment Under Bond).[13] Summons was thereafter issued to respondent.[14]

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[9] Id., pp. 64-72.
[10] Id., pp. 27-33.
[11] Filed on 06 March 2018, id., pp. 73-80.
[12] Id., pp. 34-38.
[13] Supra at note 1.
[14] Summons was served on respondent on 19 June 2018. See Division Docket, p. 85.

After respondent filed his Answer/Comment[15], the Court issued a Notice of Pre-Trial Conference on 11 September 2018.[16]

Upon the filing of the parties' pre-trial briefs[17], the Court ordered the parties to submit their Joint Stipulation of Facts and Issues (**JSFI**).[18] In their JSFI, both parties agreed that only legal issues exist and thus submitted the case for decision.

<u>ISSUE</u>

In the same JSFI, the parties failed to stipulate and adopt common issues for the Court's resolution. Instead, they submitted the same for the Court's own determination. With this, the Court finds this sole issue sufficient to address the legal impasse that beset the disposition of the subject rice importation here. Thus, the issue -

> WHETHER HEREIN RESPONDENT ERRED IN FORFEITING IN FAVOR OF THE GOVERNMENT THE SUBJECT 603.15 MT OF WHITE RICE DUE TO THE ABSENCE OF AN IMPORT PERMIT FROM THE NATIONAL FOOD AUTHORITY.

<u>ARGUMENTS</u>

In sum, petitioner argues that at the time the assailed Decision was rendered on 29 January 2018, the importation of white rice was no longer regulated due the expiration of the special treatment on white rice granted by the World Trade Organization (**WTO**) to the Philippines; extending the same only up to 30 June 2017.[19]

Petitioner further contends that, when the 603.15 MT of white rice were seized, the process of importation has yet to be completed or terminated due the pendency of its payment of appropriate customs duties. Petitioner theorizes that, as a result, the laws prevalent during

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15 See Answer filed on 03 September 2018, id., pp. 101-117.

16 Id., pp. 178-179.

17 Respondent filed his Pre-trial Brief on 08 October 2018, id., pp. 182-196; while petitioner filed its Pre-Trial Brief on 09 October 2018, pp. 197-207.

18 See Order dated 11 October 2018, id., pp. 216-217.

19 DECISION ON WAIVER RELATING TO SPECIAL TREATMENT FOR RICE OF THE PHILIPPINES, WT/L/932, 25 July 2014.

the assailed Decision's promulgation should govern and not those during entry of the subject white rice into the Philippine ports. It quotes the following provision of the Republic Act (**RA**) No. 10863[20] or the Customs and Modernization Tariff Act (**CMTA**), to wit:

> ...
> SEC. 103. *When Importation Begins and Deemed Terminated.* – Importation begins when the carrying vessel or aircraft enters the Philippine territory with the intention to unload therein. Importation is deemed terminated when:
>
> (a) The duties, taxes and other charges due upon the goods have been paid or secured to be paid, at the port of entry unless the goods are free from duties, taxes and other charges and legal permit for withdrawal has been granted: or
>
> (b) In case the goods are deemed free of duties, taxes and other charges, the goods have legally left the jurisdiction of the Bureau.
> ...

Petitioner also challenges the 29 January 2018 Decision for being premature as the same was premised solely on the IP's non-issuance even if the NFA's letter dated 29 August 2019 did not categorically state that it was denying petitioner's application for an IP over the subject white rice.

Respondent, on the other hand, counters that the IP from the NFA is necessary for the subject white rice's importation; without which, the white rice can be deemed illegally imported (although it is not noxious *per se*). Respondent insists that the importation could not be treated as mere misdeclaration of goods that would only subject petitioner to a payment of fine hence, its release could not be expected without the IP.

Respondent invokes the case of *Auyong Hian (Hong Whua Hang) v. Court of Tax Appeals, et al.*[21], where the Supreme Court has declared an importation illegal on the grounds that the importer is not entitled to import the same. He argues that such principle is equally applicable to the case at bar.

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20 Customs Modernization and Tariff Act (CMTA).
21 G.R. No. L-28782 12 September 1974.

RULING OF THE COURT

After a careful scrutiny of the records and parties' contrasting arguments, the Court finds the petition partly meritorious.

At the outset, the Court could only point out petitioner's argument regarding the incompleteness of its importation as plain absurdity. For purposes of applying Section 103 of the CMTA[22], it is clear that importation starts with the vessel's entry into Philippine territory with the intention to unload therein. The fact that petitioner has yet to pay the necessary duties on its imported articles does not make the customs laws any less applicable to its case.

Moving forward, to resolve the issue herein, the Court finds it imperative to discuss the subject of rice importation *vis-à-vis* the Philippines' obligations under the WTO Trade Agreement. As the principles therein are generally accepted under international law, they are deemed integrated as part of our domestic laws by virtue of the 1987 Constitution.[23]

As regards rice importation, the WTO *Agreement on Agriculture* (**WTO Agreement**), in particular, imposes the following restriction on member states:

> ...
>
> *Part III*
> *Article 4*
> *Market Access*
>
> ...
>
> 2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.
>
> ...

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22 Supra at note 20.

23 ARTICLE II
DECLARATION OF PRINCIPLES AND STATE POLICIES

...

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Such prohibited measures include:

...

... [Q]uantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties, whether or not the measures are maintained under country-specific derogations from the provisions of GATT 1947, but not measures maintained under balance-of-payments provisions or under other general, non-agriculture-specific provisions of GATT 1994 or of the other Multilateral Trade Agreements in Annex 1A to the WTO Agreement.[24]

...

The foregoing obligation is not without exception. The agreement further provides:

...

ANNEX 5
SPECIAL TREATMENT WITH RESPECT TO PARAGRAPH 2 OF ARTICLE 4

Section A

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

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

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

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

[24] Part III, Article 4(2), Agreement on Agriculture.

> (d) such products are designated with the symbol "ST-Annex 5" in Section I-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and
>
> (e) minimum access opportunities in respect of the designated products correspond, as specified in Section I-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.[25]
>
> ...

In relation thereto, RA 8178[26] was enacted in order for the government to further carry out its obligations under the WTO Agreement thereby, removing non-tariff import restrictions on agricultural products with the exception of rice.

Pursuant to its goal to retain stricter regulations on rice importation, the Philippines was able to have its special treatment on rice extended until 30 June 2017.[27] Therefore, it is undisputed that at the time of the subject 603.15 MT of white rice's importation, the NFA still had the authority to grant IPs. Respondent then could not be faulted for effecting the seizure of the subject white rice absent a corresponding IP for it.

However, the Court is not unmindful of the factual circumstances that led petitioner to this precarious situation. We agree with the findings of the Collector of SLFU that petitioner was not aware of the additional quantity of white rice shipped by BDL. Moreover, the fact that petitioner paid in advance and prior to the importation all the taxes and duties covering a total importation of 9,250 MT (amounting to ₱64,452,699.00) clearly suggests the absence

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25 Annex 5, Section A, id.

26 AN ACT REPLACING QUANTITATIVE IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS, EXCEPT RICE, WITH TARIFFS, CREATING THE AGRICULTURAL COMPETITIVENESS ENHANCEMENT FUND, AND FOR OTHER PURPOSES.

27 DECISION ON WAIVER RELATING TO SPECIAL TREATMENT FOR RICE OF THE PHILIPPINES, WT/L/932, 25 July 2014.

of any fraud on its part. Likewise, at the time of petitioner's importation, petitioner's COE limit of 9,250 MT had yet to be exceeded.

It is noteworthy that, during the administrative proceedings, a miscommunication between the BOC and NFA arose. Again, We quote the pertinent portion of the NFA's letter to the BOC regarding the update on petitioner's request for an IP for the uncovered amount of white rice, to wit:

> ...
>
> With regard to your query on PGMC's application for the required Import Permit of 600 MT shipment, **please be informed that the evaluation process for the issuance of Import Permit may include the result of BOC seizure/offered for settlement case now pending with your Office.** In the event that the resolution of its settlement case be available, may we request that the NFA be provided a copy of this for further evaluation of our Legal Department.
>
> ...

It is clear from the letter's tenor that the NFA merely articulated the possibility of taking account of respondent's decision on petitioner's offer of settlement as a pre-condition to the IP's issuance. Unfortunately, respondent took the letter as evidence of the IP's non-issuance which ultimately resulted in the denial of petitioner's offer of settlement.

It should be noted that, when the assailed decision was rendered, the Philippines' special treatment had already expired making thus the issuance of QRs (such as an IP) prohibited under the WTO Agreement or at the very least, unnecessary.

Moreover, when the Collector of SLFU rendered his recommendation to approve petitioner's settlement on the condition that it should procure an IP for the subject white rice, it was already 19 June 2017 or just eleven (11) days shy from the special treatment's expiration on 30 June 2017. Certainly, this left petitioner with no ample time to procure the IP. It is noted as well that the IP's issuance was within the NFA's control not petitioner's.

Interestingly, the records show that petitioner had already requested for the IP's issuance as early as 23 December 2016 and the NFA acknowledged on 29 December 2016 that it was already in the process of evaluating petitioner's request. Some of the necessary documentation that the NFA required (for the IP's issuance) was likewise forwarded by BDL although at a much later time. Whether these documents were actually submitted to the NFA was not put in issue in the parties' pleadings. Moreover, the NFA's letter dated 29 August 2018 letter does not suggest any problem with petitioner's documents, only that the NFA may await the outcome of the respondent's decision prior to taking any action on petitioner's request for an IP.

To the mind of the Court, both the NFA and BOC relied on and waited for each other's action thus dilly-dallied into coming up with a decisive determination of petitioner's pleas. More particularly, the BOC was awaiting the NFA's issuance of petitioner's IP as a condition for granting its offer of settlement on the one hand. The NFA was expressing the possibility of taking respondent's decision in the forfeiture proceedings prior to issuing the IP on the other hand. As a consequence, if the NFA did not issue the IP, petitioner's offer of settlement would be denied. While, if the NFA did decide to await respondent's decision (which would, at this point, inevitably be for the offer of settlement's denial due to the IP's non-issuance), it would be hard-pressed to grant an IP over goods already decided to be forfeited in favor of the government.

This Court is equally baffled why the NFA premised the possibility of the IP's issuance on the outcome of respondent's decision when NFA Memorandum Circular (**MC**) AO-2016-09-005[28] only requires the submission of pertinent documents[29] in evaluating

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[28] GENERAL GUIDELINES IN THE IMPORTATION OF 805,200 METRIC TONS, WHITE RICE UNDER THE MINIMUM ACCESS VOLUME COUNTRY SEPECIFIC QUOTA (MAV-CSQ) AND THE MINIMUM ACCESS VOLUME OMNIBUS ORIGINS (MAV-OMB) FOR THE YEAR 2016 BY THE PRIVATE SECTOR.

[29] X. ISSUANCE AND USE OF IMPORT PERMIT (IP).

...

1.1 Arrival Information Notice (Annex 10)
1.2 Bill of Lading
1.3 Commercial Invoice
1.4 Certificate of Origin
1.5 Certificate of Fumigation
1.6 Phytosanitary Certificate
1.7 Certificate of Weight and Inspection of the quality and weight of rice and the condition of bags

whether or not an applicant may be issued an IP. Unfortunately, since the NFA was not made a party to the present case, the Court could not go further on this matter more than what is merely necessary to point out.

Given the peculiar circumstances under which petitioner has been placed and with no legal remedy in sight, despite no fault on its part, the Court is not inclined to adopt a stance that would exacerbate its already disadvantaged position against the respondent's resolve to forfeit the subject rice importation.

Although it is true that, at the time of the subject white rice's importation, the same was not covered by an IP; the parties nevertheless did not dispute the NFA's power to issue IPs subsequent to importation. In fact, the original recommendation of the Collector of SLFU to grant petitioner's offer of settlement was conditioned on its successful procurement of an IP. The correspondence between the NFA and BOC further show that the IP may still be issued regardless of the seizure proceedings instituted by respondent. *Unfortunately, at the time the assailed Decision 29 January 2018 was rendered, respondent could no longer legally obligate petitioner to procure an IP due to the special treatment's expiration.*[30] While this Court cannot direct respondent to accept petitioner's offer of settlement, we also find the forfeiture of petitioner's shipment unfair and an utterly disproportionate penalty, given the attendant circumstances.

Article 9 of the Civil Code expressly mandates the courts to make a ruling despite the "silence, obscurity or insufficiency of the laws."[31] The application of equity is imperative to fill the "open spaces in the law."[32] In one case[33], the Supreme Court also held that "our courts are both courts of law and equity, they are not powerless to determine a factual matter in accordance with both standards."

1.8 Inspection Certificate as to the Condition of the Vessel (for break bulk shipment)
1.9 Packing List
1.10 Notice of Arrival issued by Shipping Lines
1.11 **Payment Reference Code issued** by the LBP

30 Supra at note 19.

31 Article 9 of the Civil Code provides: "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws."

32 Arturo M. Tolentino, CIVIL CODE OF THE PHILIPPINES 43 (1990); Justice Benjamin N. Cardozo, THE NATURE OF THE JUDICIAL PROCESS 113 (1921).

33 *F.F. Mañacop Construction Co., Inc. v. Court of Appeals, et al.*, G.R. No. 122196, 15 January 1997.

WHEREFORE, the foregoing considered, petitioner Progressive Grains Milling Corp.'s Petition for Review filed on 04 June 2018 is **GRANTED.** Instead of forfeiture by respondent Commissioner of Customs, petitioner is **ORDERED TO PAY** the assessed customs duties covering the 603.15 MT of white rice in the amount **₱4,011,183.00**, with a fine equivalent to 30% of the deteriorated value, plus storage fees computed up to 30 June 2017 only. Upon payment, respondent is **ORDERED** to **RELEASE** the subject 603.15 MT of white rice to petitioner.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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