REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KUTANGBATO CONVENTIONAL TRADING MULTI PURPOSE COOPERATIVE,
Petitioner,

- versus -

THE SECRETARY OF THE DEPARTMENT OF FINANCE,
Respondent.

C.T.A. CASE NO. 7028

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

Promulgated:
AUG 0 6 2008
10:56 a.m.

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DECISION

UY, J.:

Before Us is a Petition for Review filed on August 3, 2004 by petitioner Kutangbato Conventional Trading Multi Purpose Cooperative, against respondent Secretary of Finance, pursuant to Section 7 (a)(6) of Republic Act 9282 relative to the decision of the latter on customs cases elevated to him automatically for review from the decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code.

The assailed Decision of the respondent pertains to the 9th Indorsement dated April 1, 2004 issued by then Undersecretary of Finance, Ma. Grácia M. Pulido-Tan, which reads:

> **"9th Indorsement
> 01 April 2004**
>
> Respectfully returned to the Commissioner of Customs, Manila, the within papers bearing on Batangas S.I. No. 02-03 relating to the shipment of 73 Container Vans of Imported Rice Loaded on Board M/V "Nosa Senhora de Fatima," AGRO FARM, LAS BUENAS FARM AND FARM/HARBOUR LINK TRANSPORT, CLAIMANTS, AND **KUTANG BATO CONVENTIONAL TRADING MULTI-PURPOSE COOPERATIVE,** CLAIMANT-INTERVENOR, with the instruction that the Bureau strictly abide by and comply with our 4th Indorsement dated 21 November 2003.
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> This Department having acted on the case as expressed in its 2nd and 4th Indorsement of which Movant appears to have been notified through the 3rd Indorsement of the Commissioner and the 5th Indorsement of special assistant Reynaldo V. Umali, Movant's allegation that the Decision of the District Collector has become final and executory should not be taken by the Bureau at face value. Any question of Movant on the matter must be raised by him in the proper court and not to the Bureau nor this Department. It is this Bureau's function to implement our 4th Indorsement.
>
> For strict compliance.
>
> (Signed)
> **MA. GRACIA M. PULIDO-TAN**
> Undersecretary"[1]

Subsequently, petitioner filed a Motion for Reconsideration dated May 18, 2004 praying for a reconsideration of the aforequoted decision but the same was denied in the Letter dated June 16, 2004.[2]

[1] Exhibit "EE", Docket, p. 1064.
[2] Annex "B", Petition for Review, Docket, pp. 26-28.

THE FACTS

Petitioner Kutangbato Conventional Trading Multi Purpose Cooperative (KCTMPC) is a duly registered cooperative, with the Cooperative Development Authority (CDA),[3] with offices in the Autonomous Region in Muslim Mindanao (ARMM) under Republic Act (R.A.) No. 9054, otherwise known as the Expanded and Amended Organic Act of the ARMM. It was issued a Grains Business License "to engage in retailing, wholesaling, warehousing and importing," by the National Food Authority (NFA) on June 27, 2002, subject to the issuance of NFA permit per transaction.[4]

On the other hand, respondent is the head of the Department of Finance (DOF) primarily responsible for the sound and efficient management of the financial resources of the Government, its subdivisions, agencies and instrumentalities; and vested with the power to review the decisions of the Commissioner of the Bureau of Customs (BOC), as provided under Section 2313 of the Tariff and Customs Code of the Philippines (TCCP).

On April 15, 2002, July 15, 2002, and December 26, 2002, petitioner allegedly wrote to the Department of Trade and Industry-ARMM (DTI-ARMM) requesting for the issuance of a special authority/permit to engage in conventional trading via the Labuan - Malaysia - Singapore - Polloc, Maguindanao route. Thus, in the Letters dated May 3, 2002; July 31, 2002; October 15, 2002; and January 8, 2003,[5] Regional Cabinet Secretary Ishak V.

[3] Certificate of Registration No. RN-1347-KEO issued on March 23, 1994, Exhibit "A", Docket p. 883.
[4] License No. L38L00103-02, CN 1438-4-03953; Common exhibits: Exhibit "B" for the petitioner, Docket, p. 884; and Exhibit "1" for the respondent, Docket, p. 1178.
[5] Common exhibits: Exhibits "D", "E", "F" and "G", for petitioner, Docket, pp. 886-889, respectively, Exhibits "2"; "2-b"; "2-c"; "2-d", for respondent Docket, pp. 1179, 1181, 1182, and 1183, respectively.

Mastura of the DTI-ARMM wrote petitioner that the DTI-ARMM has no objection for the latter to engage in conventional trading of products such as grains, tires, construction materials, used vehicles, and used clothing.[6]

Likewise, petitioner allegedly wrote the Department of Agriculture and Fisheries-ARMM (DAF-ARMM) on May 17, 2002 and requested the granting of authority or permit to undertake conventional trading of rice in the ARMM with neighboring countries. In reply thereto, Regional Secretary Nasar A. Salmani wrote the Letter dated May 20, 2002,[7] that the DAF-ARMM has no objection for the cooperative to engage in conventional trading of rice within the Autonomous Region and with the neighboring countries, subject to coordination with/clearance from the DTI-ARMM.[8]

After the first importation of 3,640 bags of rice from Labuan, Malaysia by petitioner, through its team leaders, on November 10, 2002,[9] Collector of Customs Rudy M. Amistad requested comments/recommendations from the NFA Maguindanao Provincial Office, Cotabato City, as regards the letter of petitioner. On November 11, 2002, Provincial Manager Kitem P. Kadatuan of the NFA Maguindao Provincial Office, Cotabato City, replied to Collector of Customs Rudy M. Amistad, the pertinent portion is quoted hereunder, to wit:

> "With the above communications, the complete Informal Import Declaration and Entry from the Department of Finance – Bureau of Customs, Port of Parang as well as the Official Receipts of Duties and Taxes paid that has to be presented to NFA, Maguindanao Provincial Office, and considering that Kutangbato Conventional Trading Multi-Purpose Cooperative is an NFA licensed grains business enterprise with importing

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[6] Paragraphs 3.4, 3.5, 3.6 and 3.7, Admissions, Joint Stipulation of Facts and Issues (JSFI), pp. 5-6, Docket, pp. 457-458, Exhibits "D", "E", "F" and "G", Docket, p. 886-889.
[7] Par. 3.8, Admissions, JSFI, Docket, p. 458.
[8] Exhibit "H", Docket, p. 890.
[9] Paragraph 1.1, Statement of Facts, JSFI, Docket, p. 453.

> license, **and for as long as all the requirements relative thereto are duly submitted** said importation of conventional goods is deemed in order.[10]"

Subsequently, petitioner, through its team leaders, again imported rice from Labuan, Malaysia, on the following dates: on December 15, 2002, 5,233 bags; on January 3, 2003, 4,157 bags of rice; on January 24, 2003, 9,071 bags; and on January 26, 2003, 11,000 bags.[11]

On January 30, 2003, the combined elements of the Philippine Coast Guard (PCG), the Presidential Security Group (PSG), the Customs Police (Batangas) and the Customs Intelligence and Investigation Service (CIIS) intercepted in Batangas Bay, a shipment of 29,796 bags of rice on-board M/V Nossa Senhora de Fatima, which were declared as corn grits. Petitioner claimed ownership over the said shipment of rice.[12]

Consequently, the District Collector of Customs of the 4th Collection District, Batangas, issued a Warrant of Seizure and Detention (Batangas Seizure Identification No. 02-03) on January 31, 2003,[13] against the seventy three (73) container vans loaded with imported rice on board the vessel M/V Nossa Senhora De Fatima for alleged violation of Section 2530 (f), (g), (l-1), (l-3) to (l-5) of the TCCP, as amended. And on April 4, 2003, District Collector of Customs Edward P. Dela Cuesta rendered his Decision ordering the release of the 73 containers to petitioner. He concluded as follows:

> "Evidence adduced indubitably show that after the rice shipment were imported from Labuan, Malaysia by Kutang Bato Conventional Trading Multi-Purpose Cooperative, the same were cleared at Polloc under the Subport of Parang, Cotabato

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[10] Annex "F", Petition for Review, Docket, p. 32.
[11] Paragraphs 1.2; 1.3; 1.4; and 1.5, Statement of Facts, JSFI, Docket, pp. 453-454.
[12] Paragraph 1.7, Statement of Facts, JSFI, Docket, p. 454.
[13] Exhibit "T", Docket, p. 1024.

wherein import entries were filed, processed and the duties and taxes collected. This fact was testified under oath by no less than Collector Rudy Amistad of the Subport of Parang, Cotabato who equivocally declared that the seized cargo of rice loaded in 73 Container Vans, being part of the entire shipment of the claimant, had been processed through his Office. He identified the authenticity, genuineness and affirmed the veracity of the particulars indicated in all the Import entries and Bureau of Customs Official Receipts pertaining to the payments made in the aforesaid transaction.

Thus, upon release of the cargo from Cotabato Customhouse, the aspect of importation is deemed terminated and ceased to exist, the goods having left the jurisdiction of Customs ipso facto entered the regular commerce of the country. Undeniably, when the questionable cargo left the local Port, Polloc, Cotabato bound for Manila, there was no importation involved and the said transaction was in the nature of transport of local commodity and beyond the ambit of the above-mentioned provisions of the TCCP, as amended.

On the alleged 'misdeclarations/misclassifications' when the seized cargo was declared as 'corn-grits' instead of rice, the 'misdeclarations/misclassifications' in the B/Ls and Coasting Manifest do not militate against the subject shipment. It is elementary that misdeclaration exist only in the **Import Entry**, and before payment of assessable taxes and duties is made which may not hold true in the case at bar. Section 2503 of the TCCP, as amended, is very precise on the matter, which provides that:

> 'Sec. 2503. *Undervaluation*, ***Misclassification and Misdeclaration in Entry.*** **When the dutiable value of the articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the ENTRY** would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would less by ten percent (10%) than should be legally collected based on the tariff classification, of when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor, more than

> twice of such difference: Provided, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code. Provided, further, That any misdeclared or undeclared imported articles/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed pursuant to the provision of this Code.
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> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to penal provision under Section 3602 of this Code (R.A. 7651, June 04, 1993). (Emphasis supplied)

Verily, the misdeclaration/misclassification contemplated by the above cited provision refers to that made in the ENTRY. Such was outlawed so as to prevent the commission of fraud against the government, as the assessment of payable duties and taxes is based on the declaration made in the entry, the entry should contain the correct and accurate declaration of items being entered in the Philippine taxing jurisdiction. This is not the circumstances prevailing in the instant case as there is no necessity in filing an entry covering the subject shipment, the same being a local/domestic shipment and does not involve importation.

On the second issue, it has been proven that claimant KCTMPC, has been granted appropriate authority to import/clearance by the proper government offices like the DTI and the Department of Agriculture and Fisheries by virtue of the devolved powers and functions, mandated by R.A. 9054 and the Grains Business License by the NFA from the time they brought into the country the goods in question, which goes to show the propriety and legitimacy of their business in conventional trading. In addition, claimant likewise has been granted Grains Business License by the NFA Administrator in so far as 'retailing, wholesaling, warehousing and importing' of rice as a registered cooperative is concerned, 'subject to issuance of NFA permit per transaction' as well as the NFA (Region XII) Certification of Requirement Compliance. Moreover, the Provincial Manager, NFA, issued to the Collector of Parang, Cotabato a certification to the effect that for as long as the requirements relative thereto are duly submitted, said importation of conventional goods is deemed in order. On this score, KCTMPC relied on the acts made by the Regional Manager of NFA. Being a government official, his act could be construed to have been performed regularly and properly. The presumption that official duty has been regularly performed has not been disputed. (Rule 131, Sec. 3, par. M).

At this juncture, it is worthwhile to quote Section 31 of R.A. 9054, which strengthens the Organic Act that created the Autonomous Region in Muslim Mindanao.

> Section 31. Barter and Counter-Trade. Subject to existing laws, the Regional Government shall regulate traditional barter trade and counter-trade with Indonesia, Malaysia, Brunei. The goods or items that are bartered or counter-traded with the said countries shall not be sold elsewhere in the country without payment of appropriate customs or import duties. The Department of Finance shall, in consultation with the Regional government, promulgate the rules to govern barter and counter-trade within six (6) months from the approval of this Organic Act. (Underscoring ours).

Besides the aforecited provision of law, it is clear that bartered or counter-traded goods shall not be sold elsewhere in the country without payment of duties and taxes. In the present case, it is evident that the 73 container vans loaded with imported rice has already paid its duties and taxes, and therefore, said goods can be sold elsewhere in the country by its owner-claimant KCTMPC.

It may be added, in passing, that in order to obviate the possible recurrence of similar incident in the future, and to insure the smooth implementation of barter trade and counter-trade arrangement spelled out in Section 31 of R.A. 9054, it is respectfully submitted that appropriate Rules and Guidelines should be drafted and promulgated by the concerned Departments and government agencies the soonest time possible.

After a careful and judicious evaluation of the evidence presented, this Office finds no sufficient ground to engender a well-founded belief that the 73 Container Vans containing imported rice is liable to forfeiture under the aforementioned provisions of law. Accordingly, the release from customs custody of the seized cargo, upon lifting of the Warrant of Seizure and Detention issued against the goods is proper and appropriate under the circumstances.

WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the 73 Container Vans loaded with rice, subject of S.I. No. 02 be RELEASED to the claimant Kutang Bato Conventional Trading Multi-Purpose Cooperative after proper identification.

Let a copy of this Decision be furnished all the parties concerned for their information and guidance.

SO ORDERED.

Port of Batangas, Batangas City, 04 April 2003.

(Signed)
EDWARD P. DELA CUESTA
District Collector of Customs"[14]

In the Disposition Form dated July 4, 2003 for the Commissioner of Customs, Legal Service Director III, Atty. Damian M. Placido, Jr. of the Bureau of Customs declared:

> "Our Muslim brothers (members of the KCTMPC), therefore, were duly and amply authorized by the government in this transaction to import and trade in various commodities, including rice, in line with the ARMM's Organic Act and avail of the national government's program involving the Brunei Indonesia Malaysia Philippines – East Asia Growth Area (BIMP-EAGA). The intervenor KCTMPC cannot be faulted to have presumed and relied on the regularity in the rendition of functions or the government officials they have dealt with. And their authority to import and trade in rice and other various commodities is bound only by the condition that payment of customs duties on these imported commodities are made. There is no iota of evidence that would point to any intent on the intervenor's part to defraud the government. As already discussed, KCTMPC have clearly paid the duties and taxes on the imported commodities, including those due on the seized rice shipment. Having done such, the intervenor can now locally market these imported commodities within the legal parameters set forth by law.
>
> Thus, as regards the foregoing, We concur with the District Collector's Decision.
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> However, this case presents some criminal aspects. It was clearly admitted by the intervenor that certain misrepresentations were intentionally made in the local Bill of

[14] Common Exhibit, Exhibit "U" for the petitioner, Docket, pp. 1025-1043; Exhibit "3" for the respondent, Docket, pp. 1184-1202.

Lading and the Coasting Manifest with the cooperation of Harbor Link and NNC. Since the said malfeasance is no longer the province of the Bureau, the proper government authority should institute the necessary criminal action in regard to the foregoing.

RECOMMENDATION:

APPROVE the Decision and order the lifting of the WSD issued against the seized shipment of rice and its release in favor of the intervenor Kutang Bato Conventional Trading Multi-Purpose Cooperative after proper identification. The foregoing is without prejudice to any criminal action which may be instituted against the said cooperative, Harbor Link and NNC and any administrative action against the Collector and other personnel involved for possible violations of applicable Customs rules and regulations.

If in accord, attached is the indorsement prepared by the Service elevating the case to the Department of Finance for the Honorable Secretary's review of the same.

(Signed)
ATTY. DAMIAN M. PLACIDO, JR.
Director III
Legal Service"[15]

In the Disposition Form dated August 28, 2003[16] for the Commissioner of Customs, OIC-Legal Service Atty. Liza Sebastian-Torres of the Bureau of Customs also recommended the approval of the Decision dated April 4, 2003 of the District Collector, Port of Batangas and the order lifting the Warrant of Seizure and Detention (WSD).

On October 3, 2003, then Commissioner of Customs, Antonio Bernardo, finding the lifting of the WSD to be meritorious, gave due course to the Decision of the District Collector, Port of Batangas, and indorsed the case folder of Batangas S. I. No. 02-03 by way of 1st Indorsement to the Secretary

[15] Paragraph 23, Exhibit "V", Docket, pp. 1050-1051.
[16] Exhibit "QQ", Docket, pp. 1094-1095.

of Finance for automatic review pursuant to R.A. No. 7651.[17] The case folder was received by the Department of Finance on October 6, 2003.[18]

In the 2nd Indorsement dated October 29, 2003[19], Undersecretary Ma. Gracia M. Pulido-Tan returned the case folder of Batangas S.I. No. 02-03 to the Bureau of Customs for explanation of/comments on several findings of facts. The Commissioner submitted his required explanation to the issues raised therein by way of the 3rd Indorsement dated November 14, 2003[20] and returned the case folder of Batangas S.I. No. 02-03. The Department of Finance received the 3rd Indorsement and case folder on November 20, 2003.

In the 4th Indorsement dated November 21, 2003, Undersecretary Ma. Gracia M. Pulido-Tan rendered her decision, the decretal portion of which reads:

> "WHEREFORE, the Decision dated 04 April 2003 is hereby REVERSED, and the Bureau ordered to expeditionally determine the 'possible violations of applicable customs rules and regulations,' and institute such actions, criminal or otherwise, against the persons found to be responsible."[21]

Said Decision was released on December 15, 2003 as testified upon by petitioner's witness, Ma. Carmen Nepacina, Records Officer V of the Central Records and Management Division of the Department of Finance during the hearing held on November 16, 2005.[22]

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[17] Paragraph 1.11, Statement of Facts, JSFI, Docket, p. 455.
[18] TSN, November 16, 2005, p. 13.
[19] Common Exhibit, Exhibit "X" for petitioner, Docket, pp. 850-850-a; Exhibit "4" for respondent, Docket, pp. 1203-1204.
[20] Exhibit Y, Docket, pp 1053-1056.
[21] Common Exhibit, Exhibit "Z" for petitioner; Docket, pp. 1059-1062; Exhibit "5" for respondent, Docket, pp. 1205-1208.
[22] TSN, November 16, 2005, p. 27.

Thereafter, Atty. Reynaldo V. Umali, Special Assistant, Bureau of Customs, issued the 5th Indorsement returning to the District Collector of Customs, Port of Batangas for appropriate action, the case folder of Batangas S.I. No. 02-03, inviting attention to the 4th Indorsement dated November 21, 2003 of Undersecretary Grace Pulido-Tan, which is self-explanatory.[23]

On January 23, 2004, petitioner filed its Motion for Execution before the Bureau of Customs, Port of Batangas. This Motion was, in turn, indorsed by the District Collector of Batangas to the Commissioner of Customs by way of 6th Indorsement.[24] Then BOC Commissioner Bernardo referred the matter to the BOC Legal Service Director, for comment and/or appropriate action, by way of 7th Indorsement dated March 8, 2004.[25] Thereafter, the Commissioner of Customs referred petitioner's Motion for Execution to the Office of respondent Secretary of Finance (Attention: USEC Ma. Gracia M. Pulido-Tan), for its information and disposition, through the 8th Indorsement dated March 17, 2004.[26] The Department of Finance received the 8th Indorsement and petitioner's Motion on March 19, 2004.

Respondent Secretary of Finance, through Undersecretary Ma. Gracia M. Pulido-Tan, responded to the Commissioner of Customs by way of 9th Indorsement dated April 1, 2004. Undersecretary Pulido-Tan instructed the BOC to strictly abide by and comply with the 4th Indorsement dated November 21, 2003 and further directed as follows:

> "This Department having acted on the case as expressed in its 2nd and 4th Indorsement of which Movant appears to have

[23] Annex FF, Docket, p. 216.
[24] Exhibit "NN", Docket, pp. 1084-1087.
[25] Annex JJ, Docket, p. 222.
[26] Annex KK, Docket, p. 223.

been notified through the 3rd Indorsement of the Commissioner and the 5th Indorsement of Special Assistant Reynaldo V. Umali, Movant's allegation that the Decision of the District Collector has become final and executory should not be taken by the Bureau at face value. Any question of Movant on the matter must by raised by him in the proper court and not the Bureau nor this Department. It is this Bureau's function to implement our 4th Indorsement.

For strict compliance."[27]

The 9th Indorsement was released on April 23, 2004.[28] Consequently, petitioner filed a Motion for Reconsideration which was denied by way of a Resolution dated June 16, 2004 and received by petitioner on July 5, 2004.

Thus, on August 3, 2004, petitioner filed the present Petition.

In the Comment/Answer, filed on October 25, 2004, respondent argues that:

1. the rice shipment is subject to seizure and forfeiture for violation of Section 2530 (f), (g) and (l-3) to (l-5) of the Tariff and Customs Code of the Philippines;

2. the seizure and detention of the rice shipment by police authorities was lawfully conducted;

3. the power to review consists in the thorough evaluation of the records; and

4. the decision of the Batangas Port District Collector, notwithstanding its affirmance by the Commissioner of Customs, has not become final and executory.

While the case was pending trial, petitioner filed a "Motion to Release Goods Under Bond" on October 19, 2004[29], while respondent filed an Opposition thereto on December 10, 2004.[30] The Court granted the said

[27] Exhibit "EE", Docket, p. 1064.
[28] TSN, November 16, 2005, p. 30.
[29] Docket, pp. 281-283.
[30] Docket, pp. 300-306.

motion in a Resolution dated December 21, 2004[31], and subsequently, respondent's Motion for Reconsideration of said Resolution was denied by this Court in a Resolution dated April 18, 2005.[32]

Trial on the merits ensued. The parties presented their respective testimonial and documentary evidence and filed their respective Memoranda: on January 26, 2007 for the respondent, by way of registered mail and received by this Court on February 1, 2007[33]; and on February 13, 2007 for the petitioner.[34]

Prior thereto however, the Resolutions dated December 21, 2004 and April 18, 2005 were assailed by the respondent before the Supreme Court by way of a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, docketed as ***G.R. No. 168137*** entitled ***Secretary of the Department of Finance vs. Court of Tax Appeals, Second Division, et.al.***. Considering that said petition was given due course by the Highest Court in its Resolution dated January 16, 2006, and considering further that the complete records (CTA Original Docket-927 pages, Customs' Records-375 pages in folders, and transcripts of stenographic notes) of this case were ordered elevated to the First Division of the Supreme Court in its letter dated July 13, 2006, this Court, in deference to the Highest Court, issued a Resolution dated February 4, 2008 holding this case in abeyance until the original records thereof are returned to this Court for the complete resolution of the present case.

[31] Docket, pp. 329-330.
[32] Docket, pp. 481-484.
[33] Docket, pp. 1223-1249.
[34] Docket, pp. 1252-1264.

In a Letter dated March 10, 2008,[35] this Court, acting through its Executive Clerk of Court III of the Second Division, Atty. Jesus P. Inocando, Jr., requested for the withdrawal of the original records of this case to render a decision subject to substitution of certified true copies of the same, if deemed necessary. Subsequently, the Third Division of the Supreme Court issued a Resolution dated March 17, 2008 granting said request;[36] and consequently, this Court received the complete records of this case from the Supreme Court on May 8, 2008.

Hence, this Decision.

THE ISSUES

The parties stipulated on the following issues for the Court's consideration:

"1. Whether the rice shipment in question is subject to forfeiture for violation of paragraphs (f), (g) (L-3 to L-5), Section 2530 of the TCCP, as amended.

2. Whether the 9th Indorsement of the Secretary of Finance was rendered within the reglementary period allowed by law."[37]

Petitioner's Arguments:

Petitioner maintains that the seized goods are not subject to forfeiture because the rice shipment from Cotabato to Manila no longer falls within the ambit of importation since taxes and duties had already been paid. Misdeclaration and undervaluation can allegedly happen only when goods enter the Philippines for the first time. The proper informal entry declarations were filed and processed in the Port of Parang where the shipment arrived

[35] Docket, p. 1269.
[36] Docket, p. 1270.
[37] Issues, JSFI, Docket, p. 457.

and the importer was required to submit an import declaration that also served as a gate pass when the goods were released from customs custody. When the goods entered the local port of Batangas, no import declaration was required as the goods have allegedly changed its complexion after payment of taxes and duties and have become part of domestic trade. Hence, the subject rice shipment is allegedly not subject to seizure and forfeiture under Section 2530 of the TCCP.

According to petitioner, the subject importation was under the auspices of the Autonomous Region in Muslim Mindanao (ARMM) whose organic act is enumerated by Republic Act No. 9054, otherwise known as "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao", Amending for the purpose Republic 6734, entitled "An Act Providing For the Autonomous Region in Muslim Mindanao (ARMM)" as amended. And petitioner cannot allegedly be faulted for relying on the authority granted by various government agencies in this transaction, in pursuit of the National Government's program relative to the Brunei-Indonesia – Malaysia –Phils – East Asia Grown Area (BIMP-EAGA) implemented under the ARMM's Organic Act.

More importantly, petitioner stresses that respondent was not able to prove fraud in the alleged importation of the subject cargo of rice. Since this particular petition involves forfeiture, fraud is allegedly never presumed and failure to prove fraud is a bar to forfeiture. On the contrary, petitioner was allegedly able to show utmost good faith in this importation transaction.

With respect to the second issue, petitioner posits that several months lapsed before respondent rendered a Decision by way of a 9th Indorsement.

The shipments under issue were imported from Labuan, Malaysia between November 2002 and January 2003. Upon its seizure in January 2003 at the Port of Batangas, the hearing of the warrant of seizure and detention was decided on April 4, 2003. The case folder was elevated for automatic review to the Legal Service Division who reviewed and evaluated the case for the Commissioner. The favorable review was completed by the Legal Service only on July 4, 2003 by way of a Disposition Form or commonly referred to as the DF. Again, the DF was allegedly subjected to another review by the Deputy Commissioner for Revenue Monitoring who gave his approval sometime August 2003. From the moment of seizure on January 31, 2003 to the approval of the Commissioner on October 3, 2003, a total period of 10 months had allegedly lapsed considering that the cargo is rice properly classified as a perishable commodity.

Hence, under Section 2313 of the TCCP, the decisions of the Collector and Commissioner of Customs became final and executory.

Respondent's Counter-arguments:

Respondent submits that under Section 1202 of the TCCP, as long as importation has not been terminated, the imported goods remain under the custody and jurisdiction of the Bureau of Customs. In the present case, the imported goods remain under the custody and jurisdiction of the Bureau of Customs as petitioner failed to show that legal permit for the withdrawal of the subject importations had been granted. Granting that the Bureau of Customs lost custody and jurisdiction over the rice shipment, the Bureau of Customs regained the same after the rice shipment was intercepted at the Batangas

Bay by the combined elements of PCG, PSG, Customs Police of Batangas, and CIIS.

Respondent further claims that there were clear violations of the TCCP and therefore subject to seizure and forfeiture. *First*, petitioner has no clear license to undertake the importation of rice thereby making the rice shipment contrary to law. *Second*, the rice shipment was misdeclared as corn grits. *Third*, there is a strong indication that petitioner was just being used as dummy or conduit for Agro Farm, Las Buenas Farm and SCC Farm, entities which had also laid claim to the rice shipment in question, to facilitate the smuggling of the rice shipment into the country. *Fourth*, the rice shipment was imported not by petitioner but by its members who do not possess any authority or license therefore, and in volumes beyond what is legally allowed. *Fifth*, the carrying vessel M/V Nossa Senhora de Fatima deviated its route and docked at the Batangas Port.

As regards the authority of the PCG and PSG to intercept M/V Nossa Senhora de Fatima in search of illegal cargo; respondent avers that they were acting in close coordination and cooperation with the Customs Police of Batangas who, by the nature of their functions under Sections 2203 and 2210 of the TCCP, are authorized to enforce tariff and customs laws.

Anent the 4th Indorsement of Undersecretary Pulido-Tan, which petitioner assails for having expanded the scope of issues under review, respondent counters that Undersecretary Pulido-Tan, acting for the Secretary of Finance, exercises control and supervision over the Commissioner of Customs and District Collectors nationwide. She, therefore, has the power to approve, modify or even reverse the action or decision of the Commissioner of Customs and District Collector concerned.

The Decision of the Batangas Port District Collector, which was affirmed by the Commissioner of Customs, has allegedly not become final and executory. The thirty (30)-day period provided under Section 2313 of the TCCP should be considered merely as directory. Ample considerations must also be given to the exigencies and limitations of human effort and complexity of the case.

THE COURT'S RULING

First Issue: Is the rice shipment imported by petitioner subject to forfeiture under Section 2530 of the TCCP?

In ***Carrara Marble Philippines, Inc. vs. Commissioner of Customs***,[38] the Supreme Court held that the Tariff and Customs law subjects to forfeiture any article which is removed contrary to law from any public or private warehouse under customs supervision, or released irregularly from Customs custody. Section 2530 of the TCCP enumerates the properties subject to seizure and forfeiture. It reads:

> "**SECTION 2530.** ***Property Subject to Forfeiture Under Tariff and Customs Law.*** — Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:
>
> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to

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[38] G.R. No. 129680, September 1, 1999.

forfeiture; Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

b. Any vessel engaging in the coastwise which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination;

d. Any part of the cargo, stores or supplies of a vessel or aircraft arriving from a foreign port which is unladen before arrival at the vessel's or aircraft's port of destination and without authority from the customs officials; but such cargo, ship or aircraft stores and supplies shall not be forfeited if such unlading was due to accident, stress of weather or other necessity and is subsequently approved by the Collector;

e. Any article which is fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard or container freight station under customs supervision;

f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;

g. Unmanifested article found on any vessel or aircraft if manifest therefore is required;

h. Sea stores or aircraft stores adjudged by the Collector to be excessive, when the duties assessed by the Collector thereon are not paid or secured forthwith upon assessment of the same;

i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;

j. Boxes, cases, trunks, envelopes and other containers of whatever character used as receptacles or as device to conceal article which is itself subject to forfeiture under the tariff and customs laws or which is so designed as to conceal the character of such articles;

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

l. Any article sought to be imported or exported.

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;

(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government." (*Emphasis Ours*)

For the above-quoted Section to apply, there must be an unlawful importation or deliberate possession of illegally imported goods. It is therefore necessary that this Court determines whether or not, the importation of the subject shipment of rice has been terminated upon its entry at the port of Polloc, Cotabato, prior to the time that it was loaded on board M/V "Nossa Senhora de Fatima", an inter-island vessel destined to another local port in the Philippines.

The pertinent provision of the Tariff and Customs Code of the Philippines (TCCP) is Section 1202, which reads:

> "**SECTION 1202.** ***When Importation Begins and Deemed Terminated.*** — Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs." *(Underscoring Ours)*

Based on the foregoing legal provision, importation begins upon entry of the vessel or aircraft carrying the imported articles into Philippine jurisdiction and the unloading of the same therein; while importation is deemed terminated, either upon payment of appropriate duties, taxes and other charges imposed upon the imported articles at a port of entry and the legal permit to withdraw the same having been granted for goods subject to duties, taxes and other charges; or, upon legally leaving the jurisdiction of the customs in case of articles that are free of duties, taxes and other charges.

Respondent contends that even assuming *arguendo* that the proper customs duties and taxes had been paid on the subject shipment, still petitioner failed to show that the legal permit for the withdrawal of the same had been granted. And assuming further that the legal permit for the withdrawal of subject shipment had been granted and the same had been brought out of the customs area thereby rendering the Bureau of Customs to have lost custody and jurisdiction over it, nevertheless, when the rice shipment was intercepted at the Batangas Bay by the combined elements of the Philippine Coast Guard (PCG), the Presidential Security Group (PSG), the Customs Police (Batangas), and the Customs Intelligence and Investigation Service (CIIS), the Bureau of Customs, allegedly effectively regained custody and jurisdiction over the same citing the case of Papa v. Mago.[39]

The Court does not agree with respondent's position.

A careful scrutiny of the evidence presented in this case reveals that the importation was validly terminated. The five (5) shipments of rice were shipped and imported from Labuan, Malaysia by petitioner, and these were cleared by the Bureau of Customs when these were unloaded at Polloc Port, in Cotabato. Petitioner's import entries and pertinent documents were filed and processed; duties and taxes were accordingly assessed and collected; and the rice shipments were duly released from the Customs' custody. Thereafter, the Bureau of Customs lost jurisdiction over them.

As the Supreme Court explained, importation refers to bringing of goods from abroad into the country. It begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unlade therein and is deemed terminated upon payment of the duties, taxes, and other charges due upon the articles or secured to be paid at a port of entry,

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[39] 22 SCRA 857, (1968).

and the legal permit for withdrawal shall have been granted, or until they have legally left the jurisdiction of the Bureau of Customs.[40]

Contrary to respondent's contention that petitioner failed to show that it was granted a legal permit for the withdrawal of rice shipments, the uncontroverted fact is that the appropriate officer of the Bureau of Customs allowed petitioner to withdraw the subject rice shipment. This was testified upon by petitioner's witness, Collector Pedro Quinones of the Bureau of Customs, Sub-port of Parang, Cotabato City, by way of Judicial Affidavit, during the hearing held on September 19, 2005,[41] to wit:[42]

> "Q: Do you know Kutangbato Conventional Trading Multi-Purpose Cooperative, the Petitioner in this case?
>
> A: When I was still the Deputy Collector for Operations, KCTMPC imported several items. The previous Collector Mr. Rudy Amistad and I would discuss and coordinate the status and processing the documents of their importation. I have personal knowledge about their transactions with the Bureau of Customs. I know that KCTMPC is engaged in conventional trading under the auspices of the Autonomous Region of Muslim Mindanao operating within the Brunei Indonesia Malaysia Philippines – East Asia Growth Area (BIMP-EAGA). They imported assorted articles such as rice, noodles, jars, coffee, towels and other items from Labuan, Malaysia.
>
> Q: When did KCTMPC import these articles?
>
> A: There were five importations made from November 2002 up to January 2003.
>
> Q: How many bags of rice did they import?
>
> A: For the first shipment, they brought in 3,640 bags. For the second shipment, they brought in 5,233 bags. For the third shipment, they brought in 4,157 bags. For the fourth shipment, they brought in 9,071 bags. For the last shipment they brought in 11,000 bags for a grand total of 33,100 bags.

[40] General Travel Service, Ltd. vs. David, et al., No. L-19259, September 23, 1966; Llamado vs. Commissioner of Customs, No. L-28809, May 16, 1983.
[41] Minutes of hearing held on September 19, 2005, Docket, p. 803.
[42] Exhibits "PP" to "PP-5-A", Docket, pp. 1088-1093.

Q: What documents did you require KCTMPC to submit upon arrival of their importations?

A: We required the importer to submit the vessel inward foreign manifest, bill of lading, commercial invoice, packing list, Certificate of Registration, NFA Grains Business License, the NFA letter dated November 11, 2002, DTI Importation Commodity Clearance, Department of Agriculture and Fisheries Clearance, payment of Customs taxes and duty. The most important document is the Informal Import Declaration and Entry (IIDE) . . . .

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Q: Why is the Informal Import Declaration and Entry important?

A: For reasons of administrative facility and because the cooperative has many members, we required the Cooperative Team Leaders to fill out this Customs form individually so that it will be easier to identify what items belonged to whom. It will be easier for the Bureau because the same IIDE serves as a gate pass during the physical release. Also, in order that the taxes and duties can be assessed correctly against the cooperative.

Q: Why did the team leaders appear as consignees in the IIDE?

A: When the barter trade was still active around the 80's, the Bureau used the same system where the team leaders appeared. The purpose is that the small entrepreneur can join the business without their going to Labuan, Malaysia. So we merely followed the old system because we found the processing faster and more convenient instead of transacting with the members individually.

Q: Did the Cooperative comply with all the requirements set by the Tariff Code for a valid importation?

A: The Port personnel at the Bureau of Customs Cotabato were satisfied that all the requirements were met as in fact we allowed the release. The Collection reports were forwarded to the Commissioners office in Manila.

Q: Was the release of the goods to the Cooperative equivalent to the termination of the importation?

A: Section 1202 of the Tariff Code explains that upon payment of duties, taxes at the port of entry, and the legal permit for withdrawal of the shipment have been granted, the importation is deemed terminated. The

IIDE serves as the gate pass while the payment of the taxes and duties serves as a permit to withdraw the goods. After payment, the articles are now integrated into the local commerce.

Q: Are you aware that the 20 bags of rice per member allocation were exceeded?
A: No sir. I know that there are 53 Team Leaders and every team can have 29 members or even more. The cooperative has at least a thousand members.

Q: One of the documents you identified is Exhibit B, the NFA Grains License. Is the importation of rice one of the allowed activity?
A: Yes sir. Importation is allowed.

Q: And what was the basis in allowing the Cooperative to import rice?
A: These are the Department of Agriculture and Fisheries no objection letter dated May 20, 2002, Department of Trade and Industry importation clearances as well as the letter from the National Food Authority dated November 11, 2002. (Exhibits C, D, E, F, G, H)

Q: How much taxes and duties were paid by the Cooperative for the total shipment?
A: The Bureau of Customs Official Receipts for a total amount of P9,147,174.00 were paid. These can be seen in Exhibits J, L, N, P and R.

Q: You also identified a document pre-marked as Exhibit S, the Hold Order 005-2003 from the Bureau of Customs North Harbor. What is this document all about.
A: The Cooperative shipped out 10 container loads of rice that were held at Manila. They complained to us why the shipment was being held when taxes had been paid so I called up Collector De La Cuesta to explain that the rice came from our port.

Q: Have the containers been released?
A: I do not know what happened to the cargo after the hold order was issued because it is outside our jurisdiction." *(Emphasis and underscoring Ours)*

During cross-examination, witness Quinones clarified:[43]

[43] TSN, September 19, 2005, pp. 22-26.

"Q: So, it is not true that the IIDE is the gate pass for the physical release of the goods?

A: Yes, sir, this is also the form that they will use for the release of the goods if they pay already the duties and taxes. This will coincide with the OR.

Q: So, you agree with me when I say that it is the legal permit for the withdrawal of the goods?

A: In our Port, sir, we usually do this.

Q: But is this practice being observed in the other Ports of the Customs throughout the Philippines or just in your Port?

A: You know, sir, because our Port is very different from other ports, because we are under the autonomous region, we process the sale as it is before. When they file their Informal Import Declaration Entry, then, we process, we assess. And after they pay the duties and taxes, we issue OR; then, we release the goods.

Q: Is that practice allowed under the Tariff and Customs Code of the Philippines?

A: Yes, sir. That is what we have been doing since before.

Q: But why is it not being observed in the other Ports in the Bureau of Customs?

A: But you know, sir, after doing this, we submit all the documents. We copy furnish to our District and to the Commissioner of Customs. We are giving copies.

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Q: You also mentioned, Mr. Witness, that the payment of the customs' duties and taxes serve as the permit to withdraw the shipment. Am I correct?

A: Yes, sir.

Q: In other words, the gate pass which is the IIDE and the payment of customs' duties and taxes serving as a permit are two different things?

A: This Informal Import Entry, your Honor, we cannot release the goods with this document only. We release the goods after payment of the duties and taxes with the official receipt.

JUSTICE CASTAÑEDA

May I ask this clarificatory question?

What you are saying is that, the Import Entry together with the payment of the duties and taxes will serve as the gate pass for the release of the goods?

COLLECTOR QUINONES

Yes, your Honors."
(Emphasis Ours)

The Court does not agree with respondent's argument that the Bureau of Customs regained jurisdiction and custody of the imported goods by citing ***Papa vs. Mago, et al.***[44] as jurisprudence. In the said case, the Supreme Court found that the importation was not validly terminated as there was no payment of duties and taxes. The Supreme Court ruled:

"xxx. As long as the importation has not been terminated the imported goods remain under the jurisdiction of the Bureau of Customs. **Importation is deemed terminated only upon the payment of the duties, taxes and other charges upon the articles, or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted. The payment of the duties, taxes, fees and other charges must be in full.**

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Even if it be granted, *arguendo*, that after the goods in question had been brought out of the customs area the Bureau of Customs had lost jurisdiction over the same, nevertheless, when said goods were intercepted at the Agrifina Circle on November 4, 1966 by members of the Manila Police Department, acting under directions and orders of their Chief, Ricardo G. Papa, who had been formally deputized by the Commissioner of Customs, the Bureau of Customs had regained jurisdiction and custody of the goods. **Section 1206 of the Tariff and Customs Code imposes upon the Collector of Customs the duty to hold possession of all imported articles upon which duties, taxes, and other charges have not been paid or secured to be paid, and to dispose of the**

[44] No. L-27360, February 28, 1968.

> **same according to law.** The goods in question, therefore, were under the custody and at the disposal of the Bureau of Customs at the time the petition for *mandamus*, docketed as Civil Case No. 67496, was filed in the Court of First Instance of Manila on November 9, 1966. The Court of First Instance of Manila, therefore, could not exercise jurisdiction over said goods even if the warrant of seizure and detention of the goods for the purposes of the seizure and forfeiture proceedings had not yet been issued by the Collector of Customs." (*Emphasis Ours*)

In the instant case, the Court finds that the subject importations were appropriately terminated upon payment by petitioner of the corresponding customs duties and taxes, and the subsequent release of the goods by the Bureau of Customs. The Court takes note of the importance of the various Informal Import Declaration and Entry or IIDE, identified by petitioner's witness, Collector Pedro Quinones, who also said that the same served as the gate pass during the physical release of the imported articles. Further, he said that the payment of the taxes and duties, evidenced by the Bureau of Customs Official Receipts (which he also identified in his Judicial Affidavit) served as the permit to withdraw the subject imported articles.[45]

The Court, likewise, does not agree with respondent that the rice shipments were smuggled for lack of proof that petitioner had "NFA permit per transaction". Enlightening is the testimony of Secretary Ishak V. Mastura on this point during the hearing held on January 30, 2006.[46] We quote:

> "Q: What is the ARMM?
> A: Congress passed Republic Act No. 9054 entitled 'An act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the purpose Republic Act No. 6734, entitled An Act Providing for the Autonomous Region in Muslim

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[45] Informal Import Declaration and Entry or IIDEs marked as Exhibits "I", "I-1 to I-24"; "K", "K-1 to K-30", "M", "M-1 to M-23", "O", "O-1 to O-30", "Q", "Q-1 to Q-15";Bureau of Customs Official Receipts marked as Exhibits "J", "L", "N", "P", "R".
[46] Minutes of the hearing held on January 30, 2006, and Exhibit "SS" Docket, p. 841.

Mindanao (ARMM), as Amended. Rep. Act 9054 advances the constitutional grant of autonomy by detailing the powers of the Autonomous Regional Government (ARG) and a plebiscite was conducted on August of 2001 wherein the Province of Basilan and City of Marawi voted to be included in the other four provinces composing the ARMM namely, Maguindanao, Lanao del Sur, Sulu and Tawi-Tawi. No amendments may be made to the Organic Act without conducting a plebiscite hence it is superior to all other laws with regard to the grant of autonomy and its powers.

Q: What is Regional Autonomy?
A: Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government. The objective of the autonomy of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business.

In the Philippine setting, regional autonomy implies the cultivation of more positive means for national integration. It would remove the sense of alienation among the Muslims, increase their trust in the government and pave the way for the unhampered implementation of development programs in the region through a process of devolution. A necessary prerequisite of autonomy is decentralization.

Q: Could you please enlighten the Honorable Court on the concept of Decentralization?
A: Decentralization is a decision by the central government authorizing its subordinates to exercise authority in certain areas. It involves decision making by sub-national units. It is typically a delegated power, wherein a larger government chooses to delegate certain authority to local governments.

Decentralization comes in two forms - deconcentration and devolution. Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional offices.

Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to the local government units. This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to local government units in cognizance of their right to self government, to make them self reliant, and to improve their administrative and technical capabilities. The ARMM government has been in some aspects particularly in its autonomy been lumped together with other local government units and that is why the constitutional mandate for the ARMM is found in the chapter on local autonomy in the Constitution.

Q: Has there been devolution of powers in the DTI-ARMM?
A: Yes sir. Executive Order No. 481 dated September 24, 1991 manifest an unmistakable case.

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Q: In what other areas of responsibility of ARMM has the devolution been effected?
A: In the Department of Agriculture by way of Executive Order No. 460 dated May 17, 1991. In the Department of Labor and Employment, Local Government, Tourism, Environment and Natural Resources, Social Welfare and Development, Science and Technology (E.O. No. 425), For Public Works and Highways (E.O. No. 426); Department of Education, Culture and Sports (E.O. No. 459).

Q: What are your duties and responsibilities as Regional Secretary of the DTI?
A: Executive Order No. 481 enumerates the powers and functions of the DTI under the original E.O. No. 133 series of 1987 that have been transferred to the ARG. Briefly, we plan, implement and coordinate activities of the government related to trade, industry and investments within the ARMM; formulate and implement programs to strengthen industries adversely affected by the economic crisis, particularly those that have a good probability of attaining financial viability; promote domestic trade, marketing and distributions to ensure the economic and steady flow of commodities from producing and/or marketing centers to areas in short supply, among others.

Q: Do you know Kutangbato Conventional Trading Multi Purpose Cooperative (KCTMPC for short), the Petitioner in this case?

A: Yes sir. The Chairman Mr. Orlando Badoy wrote a letter to me on April 15, 2002 requesting for a special authority/permit for the cooperative to engage in conventional trading via the Brunei-Indonesia-Malaysia Philippines (BIMP) route.

Q: Did you act on the letter request?
A: Yes sir. I issued a no-objection letter allowing the cooperative to engage in conventional trading of products such as grains, tires, construction materials, used clothings and used vehicles.

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Q: What was your authority behind the issuance of the letter permit to Kutangbato?
A: **The Department of Agriculture of the Autonomous Region in Muslim Mindanao had already granted the request of KTMPC to allow them to conduct conventional trading and importation of rice from BIMP-EAGA.** As the regulatory body in the Autonomous Regional Government tasked with setting and implementing regional policies on conventional trading, particularly the traditional 'barter trading' with neighboring BIMP-EAGA countries as authorized under the Organic Act, we granted permit to the KTMPC to engage in conventional trading not only in rice but also other commodities and trade goods coming from BIMP-EAGA. The policy of the ARMM with regard to the traditional 'barter trading', which is actually conventional trading with neighboring countries such as Malaysia and Indonesia, is to be lenient and allow such trading because this type of trading has been in existence for centuries and part of Moro culture of the region. As long as the traders pay customs and duties to the appropriate government agencies such as the Bureau of Customs, we encourage traders to formalize their trading and their legal existence by going through the ARMM government agencies in order to defeat the bane of smuggling. If we do not allow them to engage in conventional trading with neighboring countries they tend to go underground and continue smuggling. By facilitating the trading formally through the ARMM government agencies we are actually able to monitor those engaged in trading and allow the collection of revenues by the Bureau of Customs, a portion of which revenues goes to the ARMM government through appropriation by the Department of Budget and Management (DBM). The more revenues the Bureau of Customs collects the more the ARMM gets as its share in

> its appropriation from the DBM. With regard to most importation of goods, the Bureau of Customs in the ARMM usually respect our autonomy but once the goods enter the Philippine territory they become domestic goods so Bureau of Customs is in charge of reconciling national government policy with regional government policy. If the Bureau of Customs does not allow the goods to enter we don't have control over the Bureau of Customs actions in this regard since the Bureau of Customs has not yet been devolved to the ARMM.[47]" *(Emphasis Ours)*

In dispensing with the requirement of NFA permit to import rice, Secretary Ishak V. Mastura of the DTI-ARMM, on cross-examination, said thus:[48]

"Q: But you will agree with me that rice being a regulated commodity, there is a need for the importer to secure an import permit or clearance from the NFA being the regulatory agency?

A: The Department of Agriculture ARMM stands in the place of the NFA in the Autonomous Region in Muslim Mindanao as to whether or not the assertion will be recognized by the National Government thru the Bureau of Customs. That is the outlook of Customs. But we talk to them and tell them that you have to respect our autonomy but if in some way, the Customs become stricter, they don't recognize the context of the situation or they don't recognize our authority, then, we might even file a case against them, for example, to recognize the authority of the ARMM because we want to enrich jurisprudence, precisely, that is one of our advocacies. That we have to enrich the jurisprudence so that we will know what kind of autonomy we really have whether or not that extends to situations like where we are now. That is why, I really make it a point to come also to this hearing because it will contribute a lot to determining what our autonomy is.

Q: In other words, it is your opinion that whenever an importer imports rice into ARMM, a permit from the NFA is no longer necessary as long as they get a permit from the Department of Agriculture?

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[47] Exhibits "SS" to "SS-1", Docket, pp. 1107-1110.
[48] TSN, January 30, 2006, pp. 46-48.

A: **In the eyes of the ARMM, yes, we will assert that there is no need for them to obtain any Permit from the NFA, although, as you know, NFA is a corporate authority. So, we assert that DAF ARMM has control and has powers with regard to agricultural products in the Autonomous Region in Muslim Mindanao."** *(Emphasis Ours)*

There is no iota of evidence that will show customs duties and taxes were not fully paid and that the rice shipments were irregularly released. Even the appropriate government agencies, such as the Bureau of Customs, the DTI-ARMM, the DAF-ARMM, found petitioner's documents in order and the customs duties and taxes due from the importations duly paid. Accordingly, this Court shall not depart from such findings.

It is a well-established principle that findings of fact by an administrative board or agency or official, following a hearing, are binding upon the courts and will not be disturbed except where the board, agency and/or official(s) have gone beyond their statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to their duty or with grave abuse of discretion.[49]

Moreover, this Court recognizes the peculiarities attending the instant case. Involved herein is the autonomous character of Muslim Mindanao. One of the purposes why ARMM was established is to provide the Autonomous Region a basic structure of government within the framework of the Constitution and national sovereignty and the territorial integrity of the

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[49] Lianga Bay Logging, Co., Inc. vs. Hon. Manuel Lopez Enage, In His Capacity As Presiding Judge of Branch II of the Court of First Instance of Agusan and Ago Timber Corporation, No. L-30637, July 16, 1987.

Republic of the Philippines.[50] The Regional Government has the power to regulate traditional barter trade and counter-trade with Indonesia, Malaysia, or Brunei; and goods or items bartered or counter-traded with said countries shall not be sold elsewhere in the country without payment of appropriate customs or import duties.[51]

As testified to by Secretary Ishak V. Mastura and Collector Pedro Quinones, the Regional Government encourages the people in the Autonomous Region to legally transact business or trade with the end view of collecting customs duties and taxes and defeat the rampant smuggling of goods into ARMM. There was, and still is, a cooperative and collective effort between and among the government agencies in the ARMM to facilitate the processing of papers, to collect the correct amount of duties and taxes; and to immediately release goods. Clearly, these purposes have been served.

As this Court finds that the importations of the subject shipments were validly terminated, Section 2530 of the TCCP cannot be applied. For imported goods or articles to be forfeited under Section 2530 (f) and (l-3) to (l-5) of the TCCP, the following elements must be present: (a) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same person of any invoice, letter or paper — all touching on the importation or exportation of merchandise; (b) the falsity of such declaration, affidavit, invoice, letter or

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[50] Section 2, Article I, R.A. No. 6734 (An Act Providing For An Organic Act For The Autonomous Region In Muslim Mindanao).
[51] Section 31, Article XII, R.A. No. 9054 (An Act To Strengthen and Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For The Purpose Republic Act No. 6734, Entitled "An Act Providing For The Autonomous Region In Muslim Mindanao", As Amended).

paper; and (c) an intention on the part of the importer/consignee to evade the payment of the duties due.[52]

As held in ***Farolan, Jr. vs. Court of Tax Appeals and Bagong Buhay Trading***,[53] fraud must be committed by an importer/consignee **to evade payment of the duties due**. The fraud must be actual, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. In the case at bench, petitioner did not commit fraud as there was no intention to evade payment of customs duties due.

For being irrelevant and immaterial to this case, this Court shall not delve upon the truthfulness of the declaration made on the documents relating to the coastwise trading of the subject rice shipment, nor shall it look into the liability of petitioner, if any, in the alleged untruthful statements or misrepresentations in the local bill of lading and cargo manifesto for the shipment of rice to other local port because this matter involves coastwise trading, not importation.

Second issue: Was the 9th Indorsement of the Secretary of Finance dated April 1, 2004 rendered within the reglementary period allowed by law.

Upon perusal of the contents of the 9th Indorsement, this Court finds that the same is not the Decision contemplated under Section 2313 of the TCCP, which is required to be rendered within the thirty (30) day reglementary period because it merely orders the implementation of the 4th Indorsement dated November 21, 2003. Thus, it is actually the 4th Indorsement which

[52] Republic of the Philippines, represented by the Commissioner of Customs vs. The Court of Tax Appeals and Agfha, Incorporated, G.R. No. 139050, October 2, 2001.
[53] G.R. No. 42204, January 21, 1993.

reversed the Decision of the Commissioner of Customs favorable to petitioner pertaining to the subject rice shipments in this case.

With this clarification, the Court shall determine the timeliness of the Decision rendered by the Secretary of Finance, through Undersecretary Ma. Gracia M. Pulido-Tan, denominated as the 4th Indorsement.

The focal provision is Section 2313 of the TCCP, quoted as follows:

> "**SECTION 2313.** ***Review of Commissioner.*** — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification on writing by the Collector of his actions or decisions, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.
>
> If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipts of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered or the decision involves imported articles whose published value is five million pesos (P5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, **That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no**

> **decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.**
>
> In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs." *(Emphasis Ours)*

The above-quoted section of the TCCP provides that the adverse Decision under review by the Secretary of Finance shall become **final and executory** if, within thirty (30) days from receipt of the record of the case, no decision is rendered or the adverse Decision is affirmed.

Relevant thereto is the Supreme Court ruling in ***Philippine Association of Free Labor Unions, et al. vs. Secretary of Labor***,[54] that:

> "When a statute specifies the time at or within which an act is to be done by a public officer or body, it is generally held to be *directory only as to the time*, and not mandatory, **unless time is of the essence of the things to be done, or the language of the statute contains negative words, or shows that the designation of the time was intended as a limitation of power, authority or right.**" (*Emphasis Ours*)

Clearly, the general rule is that when a law provides for a period within which an act must be done, compliance with said period is merely directory in nature. However, compliance to such period becomes mandatory in cases when the law considers the period as material, or its language contains negative words, or such period was intended to limit the power, authority or right of the person or entity to act thereof.

Applying the foregoing provision and jurisprudence in the instant case, this Court rules that the Decision dated November 21, 2003 (4th Indorsement)

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54 G.R. No. L-22228, February 27, 1969.

issued by the Secretary of Finance, acting through Undersecretary Pulido-Tan, was rendered beyond the thirty (30)-day reglementary period, which is considered as mandatory in nature being a limitation on the power and/or authority of the Secretary of Finance to review the decision of the Commissioner of the Bureau of Customs pursuant to Section 2313 of the TCCP.

As can be gleaned from the records, the case folder was received by the Department of Finance on October 6, 2003. Hence, the Secretary of Finance had until November 5, 2003 within which to render his decision, otherwise, the decision under automatic review shall become final and executory. While it is true that Undersecretary Pulido-Tan made her 2nd Indorsement dated October 29, 2003 requiring explanation of/comments on some matters by the Commissioner of Customs, and the case folder was returned to the BOC, it was only on November 21, 2003 when the Decision (4th Indorsement) was issued, way beyond the thirty (30)-day period reckoned from October 6, 2003. Thus, the Decision of the BOC Commissioner dated October 3, 2003 under automatic review by the Secretary of Finance, became final and executory by operation of law. In effect, it is as if no decision was timely rendered by the Secretary of Finance within the period mandated under Section 2313 of the TCCP.

Consequently, the 9th Indorsement dated April 1, 2004 which orders the implementation of the Decision dated November 21, 2003 (4th Indorsement), and all other subsequent acts/indorsements made by the Secretary of Finance, through its authorized officers, including the Resolution dated June 16, 2004, are hereby considered as acts made beyond respondent's authority and therefore cannot be lawfully implemented. Again, this is premised on the fact that the Decision of the BOC Commissioner dated October 3, 2003, which affirmed the findings of the District Collector, Port of Batangas, in the Decision dated April 4, 2003, and ordered the lifting of the WSD, became final and executory by operation of law.

This Court cannot assume that Section 2313, even Section 2315, of the TCCP was deliberately intended to become meaningless and to be treated as a dead letter. Sound public policy demands that, at the risk of occasional errors, judgments of courts as well as administrative tribunals should become final at some definite date fixed by law.[55] Public interest requires that by the very nature of things there must be an end to a legal controversy.[56]

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. Accordingly, the 9th Indorsement dated April 1, 2004 and the Resolution dated June 16, 2004, which merely implements the 4th Indorsement of the respondent Secretary of Finance, having been issued beyond the reglementary period allowed by law, are hereby **ANNULLED** and **SET ASIDE**. The Decisions of the District Collector and Commissioner of the Bureau of Customs lifting the Warrant of Seizure and Detention against the subject importation are hereby declared final and executory.

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[55] Antique Sawmill, Inc. vs. Zayco, G.R. No. L-20051, May 30, 1966.
[56] Government of the Philippine Islands vs. Del Rosario and Tiangco, G.R. No. 30874, December 26, 1929.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

See attached Dissenting Opinion

(With Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KUTANGBATO CONVENTIONAL TRADING MULTI PURPOSE COOPERATIVE,
Petitioner,

-versus-

THE SECRETARY OF THE DEPARTMENT OF FINANCE,
Respondent.

C.T.A. CASE NO. 7028

Members:

CASTAÑEDA,JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 0 6 2008

10:56 a.m.

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DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect, I find it difficult to agree with the majority that the rice importations of petitioner are not subject to forfeiture under *Section 2530 of the Tariff and Customs Code* for the following ratiocinations:

<u>Petitioner's Importations of Rice are Contrary to Law</u>

At the outset, record shows that petitioner's importations of rice were made on the basis of the following authorities/permits:

1. Grains Business License issued by the National Food Authority ("NFA") on June 27, 2002. Said authority allows petitioner to engage in "Retailing/Wholesaling/Warehousing/Importing xxx 'Subject to Issuance of NFA Permit Per Transaction'" *(Exhibit "B")*;

2. Letter dated May 20, 2002 issued by the Department of Agriculture and Fisheries- Autonomous Region in Muslim Mindanao ("DAF-ARMM"), granting petitioner authority/permit to undertake conventional trading of rice in the ARMM *(Exhibit "H")*. In said Letter dated May 20, 2002, the Department of Agriculture however stated that as long as petitioner's goods are on a limited scale and in order to address the acute economic distress of the inhabitants of the region, and pursuant to the general welfare powers of the ARMM and the equitable preferential rights of its inhabitants, as provided in the Organic Act, the Department has no objection to petitioner's engaging in conventional trading of rice within the autonomous region with the neighboring countries. However, the Department has also provided that all trading activities should be subject to coordination with/clearance from the Department of Trade and Industry-ARMM;

3. Letter dated May 3, 2002 issued by the Department of Trade and Industry ("DTI")-ARMM granting petitioner special authority/permit to engage in

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Conventional Trading via the Labuan-Malaysia-Singapore-Polloc, Maguindanao route *(Exhibit "D")*;

4. Letter dated July 31, 2002 issued by the DTI-ARMM granting petitioner importation commodity clearance for ARMM use, within 120 days from date of issue *(Exhibit "E")*;

5. Letter dated October 15, 2002 issued by DTI-ARMM granting petitioner importation commodity clearance for ARMM use, within 120 days from the date of issue *(Exhibit "F")*; and

6. Letter dated January 8, 2003 issued by the DTI-ARMM granting petitioner importation commodity clearance for compliance, within 120 days from date of issue *(Exhibit "G")*. Petitioner's importation clearance was, however, conditioned on petitioner's limited nature of trading, such as 20 bags of rice, per cooperative member.

From the foregoing, it is clear that the NFA license granted to petitioner to engage in the importation of rice is subject to the "issuance of NFA permit per transaction".

Examination of the records, however, shows that petitioner failed to obtain NFA permits for its subsequent importations of rice on the following dates: December 15, 2002 for a total of 5,233 bags; January 3, 2003 for a total of 4,157 bags; January 24, 2003 for a total of 9,071 bags; and January 26, 2003 for a total of 11,000 bags.

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But petitioner asserts, to which the majority concurs, that the requirement of the NFA permit was dispensed with, in view of the authority granted by the DAF-ARMM, allowing petitioner to engage in conventional trading of rice within the autonomous region with the neighboring countries.

With due respect to the majority, I do not agree that the DAF-ARMM permit dispenses with the necessity of securing NFA permit for every importation of petitioner.

First, the Letter dated May 20, 2002 issued by the DAF-ARMM, invoked by petitioner as the authority/permit to undertake conventional trading of rice in the ARMM, provides that "xxx as long as petitioner's goods are on a limited scale xxx the Department has no objection to petitioner's engaging in conventional trading of rice, within the autonomous region with the neighboring countries" *(Exhibit "H")*. Further, the letter states: "However, the Department has also provided that all trading activities should be subjected to coordination with/clearance from the Department of Trade and Industry-ARMM" *(Exhibit "H")*.

Thus, in a Letter dated December 26, 2002, petitioner wrote to the DTI-ARMM, requesting for a special authority/permit to engage in

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conventional trading via the Labuan-Malaysia-Singapore-Polloc, Maguindanao route. In a Letter dated January 8, 2003, DTI-ARMM issued to petitioner an importation commodity clearance, conditioned on petitioner's limited nature of trading, such as "20 bags of rice per cooperative member".

From the foregoing grants of authority/permit to petitioner to engage on conventional trading/importation, issued by the DAF-ARMM and DTI-ARMM, it is clear that petitioner's importation must be on a limited scale, and subject to 20 bags of rice, per cooperative member.

However, examination of the Informal Import Declarations and Entries ("IIDEs") of petitioner's importations of rice shows that the importations exceeded the limitation provided: on a limited scale and 20 bags of rice, per cooperative member.

On successive dates: December 15, 2002, January 3, 2003, January 24, 2003 and January 26, 2003, petitioner made unlimited importations of rice for 5,233 bags, 4,157 bags, 9,071 bags, and 11,000 bags, respectively *(Exhibits "K" to "K-30", "M" to "M-23", "O" to "O-30", and "Q" to "Q-15")*. The frequency of said importations, which is three times in a month, with huge volume/quantity cannot be considered on a limited scale.

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Furthermore, the Informal Import Declarations Entries reveal that petitioner imported more than 20 bags of rice, per cooperative member, as shown below:

Date	Entry No.	No. of members	Quantity of Rice/Bags	Allowed per Permit	**Excess**	Exhibit
Dec. 15, 2002	050-02	10	205	200	**5 sacks**	"K-24"
Dec. 15, 2002	052-02	10	210	200	**10 sacks**	"K-26"
Dec. 15, 2002	053-02	10	215	200	**15 sacks**	"K-27"
Dec. 15, 2002	054-02	10	205	200	**5 sack**	"K-28"
Dec. 15, 2002	055-02	10	210	200	**10 sacks**	"K-29"
Dec. 15, 2002	056-02	10	208	200	**8 sacks**	"K-30"
Jan. 2, 2003	021-03	1	190	20	**170 sacks**	"M-20"
Jan. 2, 2003	023-03	1	150	20	**130 sacks**	"M-22"
Jan. 2, 2003	024-03	1	186	20	**166 sacks**	"M-23"
Jan. 24, 2003	048-03	30	700	600	**100 sacks**	"O-23"
Jan. 24, 2003	049-03	30	750	600	**150 sacks**	"O-24"
Jan. 24, 2003	050-03	30	695	600	**95 sacks**	"O-25"
Jan. 24, 2003	051-03	30	750	600	**150 sacks**	"O-26"
Jan. 24, 2003	052-03	30	650	600	**50 sacks**	"O-27"
Jan. 24, 2003	053-03	30	700	600	**100 sacks**	"O-28"
Jan. 24, 2003	054-03	30	690	600	**90 sacks**	"O-29"
Jan. 24, 2003	055-03	30	640	600	**40 sacks**	"O-30"
Jan 26, 2003	056-03	30	680	600	**80 sacks**	"Q"
Jan. 26, 2003	057-03	30	700	600	**100 sacks**	"Q-1"
Jan. 26, 2003	058-03	30	650	600	**50 sacks**	"Q-2"
Jan. 26, 2003	059-03	30	680	600	**80 sacks**	"Q-3"
Jan. 26, 2003	060-03	30	680	600	**80 sacks**	"Q-4"
Jan. 26, 2003	061-03	30	700	600	**100 sacks**	"Q-5"
Jan. 26, 2003	062-03	30	650	600	**50 sacks**	"Q-6"
Jan. 26, 2003	066-03	30	700	600	**100 sacks**	"Q-10"
Jan. 26, 2003	067-03	30	680	600	**80 sacks**	"Q-11"
Jan. 26, 2003	068-03	30	680	600	**80 sacks**	"Q-12"
Jan. 26, 2003	069-03	30	750	600	**150 sacks**	"Q-13
Jan. 26, 2003	070-03	30	780	600	**180 sacks**	"Q-14"
Jan. 26, 2003	071-03	30	720	600	**120 sacks**	"Q-15"

From the foregoing, clearly, petitioner violated the very authority/permit granted to it by the above government agencies, which according to petitioner, said authorities/permits were in lieu of the "NFA permit per transaction", required by the Grains Business License issued to it by the NFA on June 27, 2002 *(Exhibit "B")*. Having infringed the conditions provided in said authorities/permits granted, petitioner's importations of rice were made in contravention of law.

Second, notwithstanding said authorities/permits issued by the DAF-ARMM and DTI-ARMM, petitioner is required to obtain NFA permit for its every importation of rice, specifically, on December 15, 2002, January 3, 2003, January 24, 2003, and January 26, 2003. The same is mandated by the Grains Business License dated June 27, 2002 issued by the NFA to petitioner, to wit: "Subject to issuance of NFA Permit Per Transaction". *PD 1770* provides that NFA shall have the power to "import/export or cause the importation of food products/commodities and/or raw materials, equipment and facilities needed in the manufacture/processing of food commodities, as may be determined by the Council, and as approved by the President of the Philippines" *(Section 7 (c) thereof)*. Since NFA has the power to cause the

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importation of food products, such as rice, it necessarily has the power to grant authority/permit to import rice and to impose the limitations/conditions on said authority/permit granted. Moreover, while rice is not a prohibited commodity, it is nevertheless a regulated commodity under *Section 7 of Circular 1389 of the Bangko Sentral ng Pilipinas*. Accordingly, its importation requires clearance/permit from appropriate government agencies, which in this case, is the NFA, pursuant to *PD 1770.*

It cannot be argued by petitioner that under *RA 9054*, otherwise known as *"An Act To Strengthen and Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For the Purpose Republic Act No. 6724, Entitled 'An Act Providing For the Autonomous Region In Muslim Mindanao', As Amended"*, petitioner is no longer required to obtain NFA permit for its every importation of rice.

Section 31 of RA 9054 provides:

> "SEC. 31. Barter and Counter Trade. - Subject to existing laws, the Regional Government should regulate traditional barter trade and counter-trade with Indonesia, Malaysia, or Brunei. The goods or items that are bartered or counter-traded with the said countries shall not be sold elsewhere in the country without payment of appropriate customs or import duties. The Department of Finance shall,

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in consultation with the Regional Government, promulgate the rules to govern barter and counter-trade within six (6) months from the approval of this Organic Act."

Pursuant to *RA 9054*, the Regional Government (ARMM) shall regulate the traditional barter trade and counter-trade with Indonesia, Malaysia and Brunei, subject to existing laws.

Considering that *Section 31 of RA 9054* categorically provides that the Regional Government regulation of the traditional barter trade and counter-barter trade with the neighboring countries is "subject to existing laws", then the Regional Government must regulate the traditional barter trade, taking into consideration the existing laws. Said "existing laws" having no qualification/limitation to those pertaining only to the Regional Government, the rule in statutory construction dictates that they pertain to existing laws enforced in the Republic of the Philippines. This, therefore, includes the above-mentioned *PD 1770*.

Since in the NFA license/permit issued to petitioner, its importation of rice is "subject to NFA permit per transaction", petitioner's every importation of rice is, therefore, subject to a separate/specific NFA permit. Thus, petitioner is duty bound to comply with said condition by obtaining NFA license, not necessarily with the

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National Government, but with the Regional Government, as mandated by *Section 31 of RA 9054*. Petitioner's failure to secure the NFA permit for its importation of rice on December 15, 2002, January 3, 2003, January 24, 2003, and January 26, 2003, therefore, contravened the condition provided in its NFA permit dated June 27, 2002.

Accordingly, while imported rice may not be considered "merchandise of prohibited importation", they themselves fall within the other category of merchandise imported "contrary to law", because regulations issued pursuant to "custom law" forms part thereof. The term "custom law" includes not only the provisions of said law proper, but also any regulations made pursuant thereto, like the Central Bank circulars, which also have the force and effect of law *(Santiago, Tariff and Customs Code Annotated, 2000 ed., pp. 178-179).* Consequently, violations of these circulars come within the purview of the Tariff and Customs Code, *Section 2530 (f)*, which authorizes the forfeiture of "any articles the importation or exportation of which is effected or attempted contrary to law" *(Gonzalo Sy Trading vs. Central Bank, 70 SCRA 588).*

On those bases alone, petitioner's importation of rice is subject to forfeiture under *Section 2530 (f) of the Tariff and Customs Code.*

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<u>*There are Badges of Fraud Committed by Petitioner in Connection with the Importation of Rice*</u>

First, examination of the Bills of Lading Nos. COTT-6OZ-1495011, COTT-6OZ-1499502, COTT-6OZ-1499503, COTT-6OZ-1499504, and COTT-6OZ-1499505 *(Exhibits "FF" to "FF-4")* shows that there are misdeclarations of the rice shipments, as corngrits. Petitioner's witness, Orlando Badoy, admitted that indeed petitioner declared the rice as corngrits. He, however, explained that said scheme was resorted to by petitioner because of the previous experience of its shipment having been seized at the North Harbor, despite the correct declaration in the shipping documents. Hence, petitioner decided to use corngrits as the description of the cargo, so as not to suffer the same problem as in their other shipments *(Exhibit "TT")*. Said reasoning, however, of petitioner, is but a shallow excuse. Notwithstanding petitioner's explanation, the fact remains that in its bills of lading in transporting the subject rice from the port of Cotabato to the port of Manila, petitioner misdeclared its rice shipments as corngrits.

Second, petitioner underdeclared the number of container vans in the bills of lading and coasting manifest. Commander Tranquilino Paiton ("Commander Paiton"), former Station Commander, Philippine Coast Guard Batangas, testified that only 54 container vans, instead of 93, were listed in the coasting manifest of the inter-island vessel, MV Nossa Senhora de Fatima.

Third, the designation of entities, such as Agro Farm, Beri Farm, Las Buenas Farm, SCC Farm, and/Harbour Link Transport, Inc. as consignees in the bills of lading *(Exhibits "FF" to "FF-4")*, has not been sufficiently explained by petitioner. Instead, the testimonies of petitioner's witnesses are contradictory. Petitioner's witness, Orlando Badoy, testified that petitioner used the names Las Buenas Farm/HLTI, SCC Farm/HLTI, Beri Farm/HLTI, and Agro Farm/HLTI, because he was informed by Alex Bacquial, General Manager of HLTI, that said entities regularly ship corngrits from Cotabato to Manila *(Exhibit "TT")*. On the other hand, petitioner's witness Alex Bacquial, testified that the names of those consignees were merely supplied by the chairman of petitioner *(TSN, dated 13 Feb. 2003, p. 34)*. In those bills of lading, petitioner was not named as importer-consignee, but merely intervened, as the real-party-in-interest.

Fourth, Commander Paiton testified that there was violation of the route of the vessel stated in the Master's Oath of Safety Departure. The vessel came from Polloc, Cotabato, destined to Manila, not to Batangas. With such route, the vessel will not pass by Batangas Bay Area, unless there is typhoon, which at that time there was none. Said deviation in the route of the carrying vessel and unloading of the shipment in the Port of Batangas, was made without prior notice of entry or clearance from the customs authorities.

The foregoing circumstances are indicative of badges of fraud on the part of petitioner. Though, this Court is aware that fraud contemplated by law is actual and not constructive, this Court is also cognizant of the doctrine that fraud, being a state of mind, need not be proven by direct evidence, but may be inferred from the circumstances of the case *(Republic vs. Gonzales, 13 SCRA 641)*.

The majority, however, opined that the enumerated circumstances are not relevant and material to the forfeiture proceeding provided in *Section 2530 of the Tariff and Customs Code*, in as much as the importation was already terminated in the instant case when the above-mentioned circumstances were committed. With due respect, I do not agree. In the case of *Carrara Marble Philippines, Inc. vs. Commissioner of Customs, 313 SCRA 462-463,* the Supreme Court ruled:

> "Contrary to the CTA's rationale for sanctioning the forfeiture, importation was terminated after Policarpio signed Gate Pass No. 5136 on 10 April 1987 evidencing withdrawal of Lot No. 15 from customs custody. Importation is deemed terminated upon payment of duties, taxes and other charges due or secured to be paid upon the articles at the port of entry, and upon the grant of legal permit for withdrawal; or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs. The forfeiture of the subject machineries however, is not dependent on whether or not the importation was terminated; rather it is premised on the illegal withdrawal of goods from Customs custody.
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> Thus, regardless of the termination of importation, Customs authorities may validly seize goods which, for all intents and purposes, still belong to the government. This is so because forfeiture takes effect immediately upon the commission of the offense. The forfeiture of the subject machineries, therefore, retroacted (sic) to the date they were illegally withdrawn from Customs custody. The government's right to recover the machineries proceeds from its right as lawful owner and possessor thereof upon abandonment by Filipinas Marble. Such right may be asserted no matter into whose hands the property may have come, and the condemnation when obtained avoids all intermediate alienations. To sanction petitioner's possession of the property would be to close our eyes to acts of defraudation practiced upon the government."

Pursuant to the foregoing ruling, forfeiture of the subject machinery is not dependent on whether or not the importation was terminated; rather it is premised on the illegal withdrawal of goods from Customs custody. Thus, regardless of the termination of importation, Customs authorities may validly seize goods which, for all intents and purposes, still belong to the government. This is so because forfeiture takes effect immediately upon the commission of the offense. The forfeiture of the subject machineries, therefore, retroacted to the date they were illegally withdrawn from Customs custody.

In the present case, the subject rice were imported contrary to law. Thus, forfeiture of the said importations takes effect immediately upon commission of the offense, that is, upon entering of the subject rice the territorial jurisdiction of the Philippines. Thus, notwithstanding petitioner's payment of the duties and taxes of the subject rice at the Bureau of Customs, Polloc Port, the same may still be validly seized even if said imported rice was already enrouted in a coastwise trading. Also, petitioner failed to show proof that said rice was removed from the Bureau of Customs on the basis of a legal permit for withdrawal.

Second Issue

The second issue is whether the Decision dated November 21, 2003 issued by the Secretary of Finance, acting thru Undersecretary Ma. Gracia M. Pulido-Tan, was rendered beyond the 30-day reglementary period.

Records show that on October 6, 2003, the date relied upon by petitioner, as the reckoning period of the counting of the 30-day period, was the date when the Department of Finance, Revenue Office, Customs and Tariff Division, received the case folder of Batangas S.I. No. 02-03 *(Exhibit "W")*. It is not the date when the Secretary of Finance, or in this case, Undersecretary Pulido-Tan herself received said case folder. *Section 2313 of the Tariff and Customs Code* specifically provides that the reckoning date of the 30-day period shall be from the time of the "receipt of records of proceedings by the Secretary of Finance". Petitioner failed to establish that on the same date, October 6, 2003, the Secretary of Finance, or in this case, Undersecretary Pulido-Tan received the records of this case. Hence, October 6, 2003 cannot be considered as the reckoning period for the counting of the 30-day period.

Moreover, records show that after the receipt on October 6, 2003 of the case folder of Batangas S.I. No. 02-03 by the Department of Finance, Revenue Office, Customs and Tariff Division, on October 29, 2003, said case folder was again returned to the Commissioner of Customs, when the latter was required to comment on Undersecretary Pulido-Tan's findings contained in the 2nd Indorsement *(Exhibit "X")*. Hence, during the time when the case folder of this case was not within the custody of Undersecretary Pulido-Tan, and the comment of the Commissioner of Customs has not yet been received, Undersecretary Pulido-Tan cannot be expected and is not obliged by law to render a decision, as the case has not yet been considered submitted for decision. Due process demands that the other party must be given an opportunity to explain its side before the case is deemed submitted for decision and a decision is rendered on the matter under review. Technically, in the present case, it was only on November 14, 2003, when the Commissioner of Customs returned the case folder to the Department of Finance, together with his explanations (3rd Indorsement) *(Exhibit "Y")*, to Undersecretary Pulido-Tan's findings in her 2nd Indorsement that the 30-day period to decide under *Section 2313 of the Tariff and Customs Code* commenced to run. It was, therefore,

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only on November 14, 2003, that the case was deemed submitted for decision. Hence, Undersecretary Pulido-Tan has until December 14, 2003 within which to decide the case. The Decision dated November 21, 2002 (4th Indorsement) having been rendered before December 14, 2003 is, therefore, well within the 30-day reglementary period.

Further, it is my humble view that *Section 2313 of the Tariff and Customs Code*, which requires the Secretary of Finance to render the decision within 30 days from the receipt of the records of the proceedings, is merely directory.

Strictly speaking, the review by the Secretary of Finance of the decision of the Commissioner of Customs is not a judicial review, since the Secretary of Finance holds an executive and not a judicial office *(Southern Cross Cement Corporation vs. Cement Manufacturers Association of the Philippines, 465 SCRA 579)*. The Collector of Customs, Commissioner of Customs and Secretary of Finance are all part of the executive branch. If the Collector of Customs rules against the government, the executive cannot very well bring suit in courts against itself. On the other hand, if a private person is aggrieved by the decision of the Collector of Customs, he can have proper recourse before the courts, which now would be

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called upon to exercise judicial review over the action of the executive branch. Since the automatic review by the Secretary of Finance of the decision of the BOC Commissioner adverse to the government is not the judicial review contemplated by law, the rule that the period prescribed by law to appeal a decision is mandatory cannot be applied. With more reason that the period to render a decision over said appeal cannot be enforced strictly against the reviewing body. Thus, the majority view that the Decision dated October 3, 2003 of the BOC Commissioner under automatic review by the Secretary of Finance had already become final and executory for failure of the Secretary of Finance to render the Decision within the 30-day reglementary period cannot be sustained.

Finally, the general rule is, when a statute specifies the time at, or within which an act is to be done by a public officer or body, it is generally held to be directory only as to time, and not mandatory, unless time is of the essence of the things to be done, or the language of the statute contains negative words, or shows that the designation of the time was intended as a limitation of power, authority or right *(Philippine Association of Free Labor Unions, et. al vs. Secretary of Labor, 27 SCRA 49).* Consistent with the general rule and taking into consideration the complexity of the issues involved in the instant case, the 30-day period for the Secretary of Finance to decide the instant case, is merely directory. Well-settled is the rule that when the higher consideration of justice so demands, technical rules may be relaxed. This ideal becomes all the more imperative when non-compliance is not intended for delay *(Lee vs. Court of Appeals, 496 SCRA 692)*. Consequently, the 9th Indorsement dated April 1, 2004, which orders the implementation of the Decision dated November 21, 2003 (4th Indorsement) and all other subsequent acts/indorsements rendered by the Secretary of Finance, as well as the resolution dated June 16, 2004, cannot be considered acts rendered beyond the respondent's authority, and are, therefore, valid and legally enforceable.

WHEREFORE, premises considered, I vote to **DISMISS** the instant Petition for Review and to **AFFIRM** the Decisions of the Undersecretary of Finance dated November 21, 2003 and April 1, 2004.

OLGA PALANCA-ENRIQUEZ
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

KUTANGBATO CONVENTIONAL TRADING MULTI PURPOSE COOPERATIVE, ***Petitioner,***	**C.T.A. CASE NO. 7028**
	Members:
	CASTAÑEDA,JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	
	Promulgated:
THE SECRETARY OF THE DEPARTMENT OF FINANCE, ***Respondent.***	AUG 0 6 2008 10:56 a.m.

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DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect, I find it difficult to agree with the majority that the rice importations of petitioner are not subject to forfeiture under *Section 2530 of the Tariff and Customs Code* for the following ratiocinations:

Petitioner's Importations of Rice are Contrary to Law

At the outset, record shows that petitioner's importations of rice were made on the basis of the following authorities/permits:

1. Grains Business License issued by the National Food Authority ("NFA") on June 27, 2002. Said authority allows petitioner to engage in "Retailing/Wholesaling/Warehousing/Importing xxx 'Subject to Issuance of NFA Permit Per Transaction'" *(Exhibit "B")*;

2. Letter dated May 20, 2002 issued by the Department of Agriculture and Fisheries- Autonomous Region in Muslim Mindanao ("DAF-ARMM"), granting petitioner authority/permit to undertake conventional trading of rice in the ARMM *(Exhibit "H")*. In said Letter dated May 20, 2002, the Department of Agriculture however stated that as long as petitioner's goods are on a limited scale and in order to address the acute economic distress of the inhabitants of the region, and pursuant to the general welfare powers of the ARMM and the equitable preferential rights of its inhabitants, as provided in the Organic Act, the Department has no objection to petitioner's engaging in conventional trading of rice within the autonomous region with the neighboring countries. However, the Department has also provided that all trading activities should be subject to coordination with/clearance from the Department of Trade and Industry-ARMM;

3. Letter dated May 3, 2002 issued by the Department of Trade and Industry ("DTI")-ARMM granting petitioner special authority/permit to engage in

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Conventional Trading via the Labuan-Malaysia-Singapore-Polloc, Maguindanao route *(Exhibit "D")*;

4. Letter dated July 31, 2002 issued by the DTI-ARMM granting petitioner importation commodity clearance for ARMM use, within 120 days from date of issue *(Exhibit "E")*;

5. Letter dated October 15, 2002 issued by DTI-ARMM granting petitioner importation commodity clearance for ARMM use, within 120 days from the date of issue *(Exhibit "F")*; and

6. Letter dated January 8, 2003 issued by the DTI-ARMM granting petitioner importation commodity clearance for compliance, within 120 days from date of issue *(Exhibit "G")*. Petitioner's importation clearance was, however, conditioned on petitioner's limited nature of trading, such as 20 bags of rice, per cooperative member.

From the foregoing, it is clear that the NFA license granted to petitioner to engage in the importation of rice is subject to the "issuance of NFA permit per transaction".

Examination of the records, however, shows that petitioner failed to obtain NFA permits for its subsequent importations of rice on the following dates: December 15, 2002 for a total of 5,233 bags; January 3, 2003 for a total of 4,157 bags; January 24, 2003 for a total of 9,071 bags; and January 26, 2003 for a total of 11,000 bags.

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But petitioner asserts, to which the majority concurs, that the requirement of the NFA permit was dispensed with, in view of the authority granted by the DAF-ARMM, allowing petitioner to engage in conventional trading of rice within the autonomous region with the neighboring countries.

With due respect to the majority, I do not agree that the DAF-ARMM permit dispenses with the necessity of securing NFA permit for every importation of petitioner.

First, the Letter dated May 20, 2002 issued by the DAF-ARMM, invoked by petitioner as the authority/permit to undertake conventional trading of rice in the ARMM, provides that "xxx as long as petitioner's goods are on a limited scale xxx the Department has no objection to petitioner's engaging in conventional trading of rice, within the autonomous region with the neighboring countries" *(Exhibit "H")*. Further, the letter states: "However, the Department has also provided that all trading activities should be subjected to coordination with/clearance from the Department of Trade and Industry-ARMM" *(Exhibit "H")*.

Thus, in a Letter dated December 26, 2002, petitioner wrote to the DTI-ARMM, requesting for a special authority/permit to engage in conventional trading via the Labuan-Malaysia-Singapore-Polloc, Maguindanao route. In a Letter dated January 8, 2003, DTI-ARMM issued to petitioner an importation commodity clearance, conditioned on petitioner's limited nature of trading, such as "20 bags of rice per cooperative member".

From the foregoing grants of authority/permit to petitioner to engage on conventional trading/importation, issued by the DAF-ARMM and DTI-ARMM, it is clear that petitioner's importation must be on a limited scale, and subject to 20 bags of rice, per cooperative member.

However, examination of the Informal Import Declarations and Entries ("IIDEs") of petitioner's importations of rice shows that the importations exceeded the limitation provided: on a limited scale and 20 bags of rice, per cooperative member.

On successive dates: December 15, 2002, January 3, 2003, January 24, 2003 and January 26, 2003, petitioner made unlimited importations of rice for 5,233 bags, 4,157 bags, 9,071 bags, and 11,000 bags, respectively *(Exhibits "K" to "K-30", "M" to "M-23", "O" to "O-30", and "Q" to "Q-15")*. The frequency of said importations, which is three times in a month, with huge volume/quantity cannot be considered on a limited scale.

Furthermore, the Informal Import Declarations Entries reveal that petitioner imported more than 20 bags of rice, per cooperative member, as shown below:

Date	Entry No.	No. of members	Quantity of Rice/Bags	Allowed per Permit	Excess	Exhibit
Dec. 15, 2002	050-02	10	205	200	**5 sacks**	"K-24"
Dec. 15, 2002	052-02	10	210	200	**10 sacks**	"K-26"
Dec. 15, 2002	053-02	10	215	200	**15 sacks**	"K-27"
Dec. 15, 2002	054-02	10	205	200	**5 sack**	"K-28"
Dec. 15, 2002	055-02	10	210	200	**10 sacks**	"K-29"
Dec. 15, 2002	056-02	10	208	200	**8 sacks**	"K-30"
Jan. 2, 2003	021-03	1	190	20	**170 sacks**	"M-20"
Jan. 2, 2003	023-03	1	150	20	**130 sacks**	"M-22"
Jan. 2, 2003	024-03	1	186	20	**166 sacks**	"M-23"
Jan. 24, 2003	048-03	30	700	600	**100 sacks**	"O-23"
Jan. 24, 2003	049-03	30	750	600	**150 sacks**	"O-24"
Jan. 24, 2003	050-03	30	695	600	**95 sacks**	"O-25"
Jan. 24, 2003	051-03	30	750	600	**150 sacks**	"O-26"
Jan. 24, 2003	052-03	30	650	600	**50 sacks**	"O-27"
Jan. 24, 2003	053-03	30	700	600	**100 sacks**	"O-28"
Jan. 24, 2003	054-03	30	690	600	**90 sacks**	"O-29"
Jan. 24, 2003	055-03	30	640	600	**40 sacks**	"O-30"
Jan 26, 2003	056-03	30	680	600	**80 sacks**	"Q"
Jan. 26, 2003	057-03	30	700	600	**100 sacks**	"Q-1"
Jan. 26, 2003	058-03	30	650	600	**50 sacks**	"Q-2"
Jan. 26, 2003	059-03	30	680	600	**80 sacks**	"Q-3"
Jan. 26, 2003	060-03	30	680	600	**80 sacks**	"Q-4"
Jan. 26, 2003	061-03	30	700	600	**100 sacks**	"Q-5"
Jan. 26, 2003	062-03	30	650	600	**50 sacks**	"Q-6"
Jan. 26, 2003	066-03	30	700	600	**100 sacks**	"Q-10"
Jan. 26, 2003	067-03	30	680	600	**80 sacks**	"Q-11"
Jan. 26, 2003	068-03	30	680	600	**80 sacks**	"Q-12"
Jan. 26, 2003	069-03	30	750	600	**150 sacks**	"Q-13
Jan. 26, 2003	070-03	30	780	600	**180 sacks**	"Q-14"
Jan. 26, 2003	071-03	30	720	600	**120 sacks**	"Q-15"

From the foregoing, clearly, petitioner violated the very authority/permit granted to it by the above government agencies, which according to petitioner, said authorities/permits were in lieu of the "NFA permit per transaction", required by the Grains Business License issued to it by the NFA on June 27, 2002 *(Exhibit "B")*. Having infringed the conditions provided in said authorities/permits granted, petitioner's importations of rice were made in contravention of law.

Second, notwithstanding said authorities/permits issued by the DAF-ARMM and DTI-ARMM, petitioner is required to obtain NFA permit for its every importation of rice, specifically, on December 15, 2002, January 3, 2003, January 24, 2003, and January 26, 2003. The same is mandated by the Grains Business License dated June 27, 2002 issued by the NFA to petitioner, to wit: "Subject to issuance of NFA Permit Per Transaction". *PD 1770* provides that NFA shall have the power to "import/export or cause the importation of food products/commodities and/or raw materials, equipment and facilities needed in the manufacture/processing of food commodities, as may be determined by the Council, and as approved by the President of the Philippines" *(Section 7 (c) thereof)*. Since NFA has the power to cause the

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importation of food products, such as rice, it necessarily has the power to grant authority/permit to import rice and to impose the limitations/conditions on said authority/permit granted. Moreover, while rice is not a prohibited commodity, it is nevertheless a regulated commodity under *Section 7 of Circular 1389 of the Bangko Sentral ng Pilipinas*. Accordingly, its importation requires clearance/permit from appropriate government agencies, which in this case, is the NFA, pursuant to *PD 1770*.

It cannot be argued by petitioner that under *RA 9054*, otherwise known as *"An Act To Strengthen and Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For the Purpose Republic Act No. 6724, Entitled 'An Act Providing For the Autonomous Region In Muslim Mindanao', As Amended"*, petitioner is no longer required to obtain NFA permit for its every importation of rice.

Section 31 of RA 9054 provides:

> "SEC. 31. Barter and Counter Trade. - Subject to existing laws, the Regional Government should regulate traditional barter trade and counter-trade with Indonesia, Malaysia, or Brunei. The goods or items that are bartered or counter-traded with the said countries shall not be sold elsewhere in the country without payment of appropriate customs or import duties. The Department of Finance shall,

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in consultation with the Regional Government, promulgate the rules to govern barter and counter-trade within six (6) months from the approval of this Organic Act."

Pursuant to *RA 9054*, the Regional Government (ARMM) shall regulate the traditional barter trade and counter-trade with Indonesia, Malaysia and Brunei, subject to existing laws.

Considering that *Section 31 of RA 9054* categorically provides that the Regional Government regulation of the traditional barter trade and counter-barter trade with the neighboring countries is "subject to existing laws", then the Regional Government must regulate the traditional barter trade, taking into consideration the existing laws. Said "existing laws" having no qualification/limitation to those pertaining only to the Regional Government, the rule in statutory construction dictates that they pertain to existing laws enforced in the Republic of the Philippines. This, therefore, includes the above-mentioned *PD 1770*.

Since in the NFA license/permit issued to petitioner, its importation of rice is "subject to NFA permit per transaction", petitioner's every importation of rice is, therefore, subject to a separate/specific NFA permit. Thus, petitioner is duty bound to comply with said condition by obtaining NFA license, not necessarily with the

National Government, but with the Regional Government, as mandated by *Section 31 of RA 9054*. Petitioner's failure to secure the NFA permit for its importation of rice on December 15, 2002, January 3, 2003, January 24, 2003, and January 26, 2003, therefore, contravened the condition provided in its NFA permit dated June 27, 2002.

Accordingly, while imported rice may not be considered "merchandise of prohibited importation", they themselves fall within the other category of merchandise imported "contrary to law", because regulations issued pursuant to "custom law" forms part thereof. The term "custom law" includes not only the provisions of said law proper, but also any regulations made pursuant thereto, like the Central Bank circulars, which also have the force and effect of law *(Santiago, Tariff and Customs Code Annotated, 2000 ed., pp. 178-179)*. Consequently, violations of these circulars come within the purview of the Tariff and Customs Code, *Section 2530 (f)*, which authorizes the forfeiture of "any articles the importation or exportation of which is effected or attempted contrary to law" *(Gonzalo Sy Trading vs. Central Bank, 70 SCRA 588)*.

On those bases alone, petitioner's importation of rice is subject to forfeiture under *Section 2530 (f) of the Tariff and Customs Code.*

There are Badges of Fraud Committed by Petitioner in Connection with the Importation of Rice

First, examination of the Bills of Lading Nos. COTT-6OZ-1499501, COTT-6OZ-1499502, COTT-6OZ-1499503, COTT-6OZ-1499504, and COTT-6OZ-1499505 *(Exhibits "FF" to "FF-4")* shows that there are misdeclarations of the rice shipments, as corngrits. Petitioner's witness, Orlando Badoy, admitted that indeed petitioner declared the rice as corngrits. He, however, explained that said scheme was resorted to by petitioner because of the previous experience of its shipment having been seized at the North Harbor, despite the correct declaration in the shipping documents. Hence, petitioner decided to use corngrits as the description of the cargo, so as not to suffer the same problem as in their other shipments *(Exhibit "TT")*. Said reasoning, however, of petitioner, is but a shallow excuse. Notwithstanding petitioner's explanation, the fact remains that in its bills of lading in transporting the subject rice from the port of Cotabato to the port of Manila, petitioner misdeclared its rice shipments as corngrits. *[initials]*

Second, petitioner underdeclared the number of container vans in the bills of lading and coasting manifest. Commander Tranquilino Paiton ("Commander Paiton"), former Station Commander, Philippine Coast Guard Batangas, testified that only 54 container vans, instead of 93, were listed in the coasting manifest of the inter-island vessel, MV Nossa Senhora de Fatima.

Third, the designation of entities, such as Agro Farm, Beri Farm, Las Buenas Farm, SCC Farm, and/Harbour Link Transport, Inc. as consignees in the bills of lading *(Exhibits "FF" to "FF-4")*, has not been sufficiently explained by petitioner. Instead, the testimonies of petitioner's witnesses are contradictory. Petitioner's witness, Orlando Badoy, testified that petitioner used the names Las Buenas Farm/HLTI, SCC Farm/HLTI, Beri Farm/HLTI, and Agro Farm/HLTI, because he was informed by Alex Bacquial, General Manager of HLTI, that said entities regularly ship corngrits from Cotabato to Manila *(Exhibit "TT")*. On the other hand, petitioner's witness Alex Bacquial, testified that the names of those consignees were merely supplied by the chairman of petitioner *(TSN, dated 13 Feb. 2003, p. 34)*. In those bills of lading, petitioner

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was not named as importer-consignee, but merely intervened, as the real-party-in-interest.

Fourth, Commander Paiton testified that there was violation of the route of the vessel stated in the Master's Oath of Safety Departure. The vessel came from Polloc, Cotabato, destined to Manila, not to Batangas. With such route, the vessel will not pass by Batangas Bay Area, unless there is typhoon, which at that time there was none. Said deviation in the route of the carrying vessel and unloading of the shipment in the Port of Batangas, was made without prior notice of entry or clearance from the customs authorities.

The foregoing circumstances are indicative of badges of fraud on the part of petitioner. Though, this Court is aware that fraud contemplated by law is actual and not constructive, this Court is also cognizant of the doctrine that fraud, being a state of mind, need not be proven by direct evidence, but may be inferred from the circumstances of the case *(Republic vs. Gonzales, 13 SCRA 641)*.

The majority, however, opined that the enumerated circumstances are not relevant and material to the forfeiture proceeding provided in *Section 2530 of the Tariff and Customs Code*, in as much as the importation was already terminated in the instant case when the above-mentioned circumstances were committed. With due respect, I do not agree. In the case of *Carrara Marble Philippines, Inc. vs. Commissioner of Customs, 313 SCRA 462-463,* the Supreme Court ruled:

> "Contrary to the CTA's rationale for sanctioning the forfeiture, importation was terminated after Policarpio signed Gate Pass No. 5136 on 10 April 1987 evidencing withdrawal of Lot No. 15 from customs custody. Importation is deemed terminated upon payment of duties, taxes and other charges due or secured to be paid upon the articles at the port of entry, and upon the grant of legal permit for withdrawal; or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs. The forfeiture of the subject machineries however, is not dependent on whether or not the importation was terminated; rather it is premised on the illegal withdrawal of goods from Customs custody.
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> Thus, regardless of the termination of importation, Customs authorities may validly seize goods which, for all intents and purposes, still belong to the government. This is so because forfeiture takes effect immediately upon the commission of the offense. The forfeiture of the subject machineries, therefore, retroacted (sic) to the date they were illegally withdrawn from Customs custody. The government's right to recover the machineries proceeds from its right as lawful owner and possessor thereof upon abandonment by Filipinas Marble. Such right may be asserted no matter into whose hands the property may have come, and the condemnation when obtained avoids all intermediate alienations. To sanction petitioner's possession of the property would be to close our eyes to acts of defraudation practiced upon the government."

Pursuant to the foregoing ruling, forfeiture of the subject machinery is not dependent on whether or not the importation was terminated; rather it is premised on the illegal withdrawal of goods from Customs custody. Thus, regardless of the termination of importation, Customs authorities may validly seize goods which, for all intents and purposes, still belong to the government. This is so because forfeiture takes effect immediately upon the commission of the offense. The forfeiture of the subject machineries, therefore, retroacted to the date they were illegally withdrawn from Customs custody.

In the present case, the subject rice were imported contrary to law. Thus, forfeiture of the said importations takes effect immediately upon commission of the offense, that is, upon entering of the subject rice the territorial jurisdiction of the Philippines. Thus, notwithstanding petitioner's payment of the duties and taxes of the subject rice at the Bureau of Customs, Polloc Port, the same may still be validly seized even if said imported rice was already enrouted in a coastwise trading. Also, petitioner failed to show proof that said rice was removed from the Bureau of Customs on the basis of a legal permit for withdrawal.

Second Issue

The second issue is whether the Decision dated November 21, 2003 issued by the Secretary of Finance, acting thru Undersecretary Ma. Gracia M. Pulido-Tan, was rendered beyond the 30-day reglementary period.

Records show that on October 6, 2003, the date relied upon by petitioner, as the reckoning period of the counting of the 30-day period, was the date when the Department of Finance, Revenue Office, Customs and Tariff Division, received the case folder of Batangas S.I. No. 02-03 *(Exhibit "W")*. It is not the date when the Secretary of Finance, or in this case, Undersecretary Pulido-Tan herself received said case folder. *Section 2313 of the Tariff and Customs Code* specifically provides that the reckoning date of the 30-day period shall be from the time of the "receipt of records of proceedings by the Secretary of Finance". Petitioner failed to establish that on the same date, October 6, 2003, the Secretary of Finance, or in this case, Undersecretary Pulido-Tan received the records of this case. Hence, October 6, 2003 cannot be considered as the reckoning period for the counting of the 30-day period.

Moreover, records show that after the receipt on October 6, 2003 of the case folder of Batangas S.I. No. 02-03 by the Department of Finance, Revenue Office, Customs and Tariff Division, on October 29, 2003, said case folder was again returned to the Commissioner of Customs, when the latter was required to comment on Undersecretary Pulido-Tan's findings contained in the 2nd Indorsement *(Exhibit "X")*. Hence, during the time when the case folder of this case was not within the custody of Undersecretary Pulido-Tan, and the comment of the Commissioner of Customs has not yet been received, Undersecretary Pulido-Tan cannot be expected and is not obliged by law to render a decision, as the case has not yet been considered submitted for decision. Due process demands that the other party must be given an opportunity to explain its side before the case is deemed submitted for decision and a decision is rendered on the matter under review. Technically, in the present case, it was only on November 14, 2003, when the Commissioner of Customs returned the case folder to the Department of Finance, together with his explanations (3rd Indorsement) *(Exhibit "Y")*, to Undersecretary Pulido-Tan's findings in her 2nd Indorsement that the 30-day period to decide under *Section 2313 of the Tariff and Customs Code* commenced to run. It was, therefore,

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only on November 14, 2003, that the case was deemed submitted for decision. Hence, Undersecretary Pulido-Tan has until December 14, 2003 within which to decide the case. The Decision dated November 21, 2002 (4th Indorsement) having been rendered before December 14, 2003 is, therefore, well within the 30-day reglementary period.

Further, it is my humble view that *Section 2313 of the Tariff and Customs Code*, which requires the Secretary of Finance to render the decision within 30 days from the receipt of the records of the proceedings, is merely directory.

Strictly speaking, the review by the Secretary of Finance of the decision of the Commissioner of Customs is not a judicial review, since the Secretary of Finance holds an executive and not a judicial office *(Southern Cross Cement Corporation vs. Cement Manufacturers Association of the Philippines, 465 SCRA 579)*. The Collector of Customs, Commissioner of Customs and Secretary of Finance are all part of the executive branch. If the Collector of Customs rules against the government, the executive cannot very well bring suit in courts against itself. On the other hand, if a private person is aggrieved by the decision of the Collector of Customs, he can have proper recourse before the courts, which now would be

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called upon to exercise judicial review over the action of the executive branch. Since the automatic review by the Secretary of Finance of the decision of the BOC Commissioner adverse to the government is not the judicial review contemplated by law, the rule that the period prescribed by law to appeal a decision is mandatory cannot be applied. With more reason that the period to render a decision over said appeal cannot be enforced strictly against the reviewing body. Thus, the majority view that the Decision dated October 3, 2003 of the BOC Commissioner under automatic review by the Secretary of Finance had already become final and executory for failure of the Secretary of Finance to render the Decision within the 30-day reglementary period cannot be sustained.

Finally, the general rule is, when a statute specifies the time at, or within which an act is to be done by a public officer or body, it is generally held to be directory only as to time, and not mandatory, unless time is of the essence of the things to be done, or the language of the statute contains negative words, or shows that the designation of the time was intended as a limitation of power, authority or right *(Philippine Association of Free Labor Unions, et. al vs. Secretary of Labor, 27 SCRA 49)*. Consistent with the general rule and taking into consideration the complexity of the issues involved in the instant case, the 30-day period for the Secretary of Finance to decide the instant case, is merely directory. Well-settled is the rule that when the higher consideration of justice so demands, technical rules may be relaxed. This ideal becomes all the more imperative when non-compliance is not intended for delay *(Lee vs. Court of Appeals, 496 SCRA 692).* Consequently, the 9th Indorsement dated April 1, 2004, which orders the implementation of the Decision dated November 21, 2003 (4th Indorsement) and all other subsequent acts/indorsements rendered by the Secretary of Finance, as well as the resolution dated June 16, 2004, cannot be considered acts rendered beyond the respondent's authority, and are, therefore, valid and legally enforceable.

WHEREFORE, premises considered, I vote to **DISMISS** the instant Petition for Review and to **AFFIRM** the Decisions of the Undersecretary of Finance dated November 21, 2003 and April 1, 2004.

OLGA PALANCA-ENRIQUEZ
Associate Justice