

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DANILO G. GALANG, doing
business under the name and style of
ST. HILDEGARD GRAINS
ENTERPRISES, and IVY M. SOUZA,
doing business under the name and
style of BOLD BIDDER
MARKETING AND GENERAL
MERCHANDISE,

Petitioners,

- versus -

The BUREAU OF CUSTOMS and
the COMMISSIONER OF
CUSTOMS,

Respondents.

CTA EB NO. 1451
(CTA Case No. 8885)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

DEC 19 2017 11:20a.m.

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DECISION

BAUTISTA, J.:

The present Petition for Review¹ prays that the Court *En Banc* reverse and set aside the Resolution² dated April 1, 2016 (the "Assailed Resolution") of the Court of Tax Appeals ("CTA") First Division (the "Court in Division").³ The Assailed Resolution dismissed the Petition for Review therein with prejudice.⁴

¹ Rollo, CTA EB No. 1451, *Petition for Review* ("PFR"), pp. 9-99, with annexes.

² Records, CTA Case No. 8885, Vol. 2, *Resolution*, pp. 1493-1513.

³ Rollo, PFR, *Prayer*, p. 52.

⁴ Records, Vol. 2, *Resolution*, p. 1512.

The Parties

Petitioner Danilo G. Galang is the sole proprietor of St. Hildegard Grains Enterprises, an entity duly registered with the Department of Trade and Industry ("DTI").⁵ Meanwhile, petitioner Ivy M. Souza is the sole proprietor of Bold Bidder Marketing and General Merchandise, an entity also duly registered with the DTI.⁶

Respondent Commissioner of Customs ("COC") is the incumbent Commissioner of the Bureau of Customs ("BOC").⁷

The Facts

Sometime in October 2013, petitioner Souza made arrangements for the importation of rice. During this period, the Philippines was no longer granted a special treatment for rice under the World Trade Organization ("WTO") General Agreement on Tariffs and Trade ("GATT"), the Agreement on Agriculture and its Annexes.⁸

Petitioner Galang, a rice trader duly accredited by the Philippine Government, entered into a commercial transaction with petitioner Souza for the purchase of imported rice.⁹

In the course of processing the release of the rice shipments from the BOC, petitioner Souza informed petitioner Galang that the BOC refused and continued to refuse to release the rice shipments, and was in fact planning to institute seizure proceedings against the rice shipments.¹⁰

Due to the imminent threat of seizure of the rice shipments and as the owner thereof, petitioner Galang filed a Complaint for

⁵ Records, Vol. 1, Consolidated PFR, *The Parties*, par. 1, p. 14. This was not denied by respondents (see Records, Vol. 1, Answer/Comment (With Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings ("Answer/Comment")) pp. 482-692, with annexes).

⁶ Records, Vol. 1, Consolidated PFR, *The Parties*, par. 1, pp. 14-15. This was not denied by respondents (see Records, Vol. 1, Answer/Comment, pp. 482-692, with annexes).

⁷ Records, Vol. 1, Consolidated PFR, *The Parties*, par. 2, p. 15. This was not denied by respondents (see Records, Vol. 1, Answer/Comment, pp. 482-692, with annexes).

⁸ Rollo, PFR, *Brief Statement of Facts*, par. 9, pp. 11-12.

⁹ *Id.*, par. 10, p. 12.

¹⁰ *Id.*, par. 11, p. 12.



Permanent Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (the "Complaint for Injunction") against the BOC before the Regional Trial Court ("RTC") on January 14, 2014.¹¹ The case entitled *Danilo G. Galang, doing business under the name and style St. Hildegard Grains Enterprises v. Bureau of Customs – the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the Incumbent District Collectors for the Ports of Manila, North and South Harbor* was raffled to Branch 11 of RTC Manila and docketed as Civil Case No. CV-14-131261.¹²

On January 23, 2014, the RTC issued an Order¹³ granting petitioner's prayer for the issuance of a Writ of Preliminary Injunction. The dispositive portion of the RTC's Order reads:

WHEREFORE, foregoing premises considered, let a writ of preliminary injunction be issued in favor of Danilo G. Galang doing business under the name and style St. Hildegard Grains Enterprises enjoining and restraining defendants Bureau of Customs, the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor and all persons acting for and in their behalf and all their agents from a) implementing NFA Memorandum Circular No. AO-2K13-03-003; b) seizing, alerting, and/or holding plaintiff's rice shipments referred in this petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; c) implementing any Alert Orders, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to Plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; and d) doing any act that would prejudice plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.

The bond for the Issuance of a Writ of Preliminary Injunction is set at TEN MILLION PESOS.

¹¹ Rollo, PFR, Brief Statement of Facts, par. 12, p. 12.

¹² Records, Vol. 1, Consolidated PFR, Annex "L," Complaint for Permanent Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction ("Complaint for Injunction"), pp. 329-372.

¹³ Id., Annex "L-1," Order, pp. 373-375.

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SO ORDERED.¹⁴

The following day, on January 24, 2014, the RTC issued a Writ of Preliminary Injunction¹⁵ with the posting of petitioner's bond. The dispositive portion of the RTC's Writ of Preliminary Injunction reads:

NOW, THEREFORE, defendants Bureau of Customs, the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor and all persons acting for and in their behalf and all their agents [are enjoined] from 1) implementing NFA Memorandum Circular No. AO-2K13-03-003; 2) seizing, alerting, and/or holding plaintiff's rice shipments referred in this petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; 3) implementing any Alert Order, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to Plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; and 4) doing any act that would prejudice plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.¹⁶

Subsequently, the RTC issued an Order amending the Writ of Preliminary Injunction and the January 23, 2014 RTC Order to include petitioner Souza's sole proprietorship, Bold Bidder Marketing and General Merchandise.¹⁷ The Order amending the Writ of Preliminary Injunction was issued by the RTC on February 27, 2014 while the Amended Order was issued on February 28, 2014.¹⁸

Alleging extreme urgency, the BOC, among others, elevated the matter to the Supreme Court by way of a Petition for *Certiorari* (With Application for Temporary Restraining Order, *Status Quo Ante* Order

¹⁴ *Records*, Vol. 1, Consolidated PFR, Annex "L-1," Dispositive Portion, pp. 374-375; emphases retained.

¹⁵ *Id.*, Annex "L-2," Writ of Preliminary Injunction, pp. 376-377.

¹⁶ *Id.* at 377; emphases retained.

¹⁷ *Id.*, Annex "I," Petition for *Certiorari* (With Application for Temporary Restraining Order, *Status Quo Ante* Order and/or Writ of Preliminary Injunction ("Petition for *Certiorari*"), Statement of Material Dates, par. 2.3, p. 216.

¹⁸ *Id.*



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and/or Writ of Preliminary Injunction (“Petition for Certiorari”)¹⁹ filed on March 11, 2014.²⁰ The case was entitled *Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture and as Chairperson of the National Food Authority Council; and the Bureau of Customs, represented by Commissioner John Phillip P. Sevilla v. Hon. Cicero D. Jurado, Jr., in his capacity as Presiding Judge of Branch, 11, Regional Trial Court in Manila; Danilo G. Galang, doing business under the name and style of St. Hildegard Grains Enterprises; and Ivy M. Souza, doing business under the name and style of Bold Bidder Marketing and General Merchandise* and docketed as G.R. No. 211375.

On March 18, 2014, the Supreme Court issued a Temporary Restraining Order (“TRO”)²¹. The dispositive portion of the Supreme Court’s TRO reads:

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, respondent Judge Cicero D. Jurado, Jr., your agents, representatives, or persons acting in your place or stead, are hereby **ENJOINED** from (1) implementing the assailed Orders dated January 23, 2014 and February 27, 2014, Amended Order dated February 28, 2014, and Writ of Preliminary Injunction dated January 24, 2014, as amended by the Order dated February 27, 2014 and (2) proceeding with the case *a quo* (Civil Case No. CV-14-131261).

FURTHER, effective immediately and continuing until further orders from this Court, You, private respondents Danilo G. Galang and Ivy M. Souza, your agents, representatives, or persons acting in your place or stead, are hereby **ENJOINED** from undertaking any and all action with respect to the subject rice shipments and any rice shipments similarly situated as those in the case *a quo* which you may acquire by sale or by importation after the filing of the case *a quo*.²²

On March 21, 2014, petitioner Galang filed with the Supreme Court an Urgent Motion and/or Manifestation for the Release of

¹⁹ Records, Vol. 1, Consolidated PFR, Annex “I,” *Petition for Certiorari*, pp. 211-287.

²⁰ See Rollo, Consolidated Memorandum, pp. 168-169.

²¹ Records, Vol. 1, Consolidated PFR, Annex “L-3,” *Temporary Restraining Order*, pp. 378-381.

²² *Id.* at 380.

Perishable Goods (Rice) Under Bond.²³ The Supreme Court denied the same for lack of merit in a Resolution²⁴ issued on April 22, 2014.

On April 3, 2014, petitioners filed with the Supreme Court a Joint Comment with Motion for Reconsideration [Re: Resolution dated 18 March 2014]²⁵; while respondents filed a Motion for Reconsideration (Re: Resolution dated 22 April 2014)²⁶ on May 29, 2014.

Meanwhile, in June and July 2014, the BOC issued Warrants of Seizure and Detention²⁷ over petitioners' rice shipments. As a result, on July 2, 2014, petitioner Souza filed with the BOC a Consolidated Motion for Release Under Cash Bond²⁸.

In the BOC's 1st Indorsement²⁹ dated July 22, 2014, the District Collector forwarded to the COC for clearance the release of petitioner Souza's rice shipments upon posting of a cash bond. However, in the BOC's 2nd Indorsement³⁰ dated August 8, 2014, the COC denied petitioner Souza's request for release. Thereafter, the BOC issued a Notice of Public Auction³¹ setting the auction of petitioners' rice shipments on August 28, 2014.

Petitioners learned of the scheduled auction on August 22, 2014.³² On the same day, petitioners filed with the BOC a letter objecting to the auction.³³

Considering the BOC failed to act on petitioners' Consolidated Motion for Release Under Cash Bond and letter dated August 22, 2014,

²³ Records, Vol. 1, Answer/Comment, Annex "2," Urgent Motion and/or Manifestation for the Release of Perishable Goods (Rice) Under Bond, pp. 529-538, with annex.

²⁴ Id., Annex "1," Notice/Resolution, pp. 525-528.

²⁵ Id., Annex "4," Joint Comment with Motion for Reconsideration [Re: Resolution dated 18 March 2014], pp. 576-688.

²⁶ Id., Annex "3," Motion for Reconsideration (Re: Resolution dated 22 April 2014), pp. 539-575, with annexes.

²⁷ Records, Vol. 1, Consolidated PFR, Annex "B," inclusive of sub-markings, Warrants of Seizure and Detention, pp. 92-96; Records, Vol. 1, PFR, Annex "C," inclusive of sub-markings, Warrants of Seizure and Detention, pp. 97-128.

²⁸ Records, Vol. 1, Consolidated PFR, Annex "F," Consolidated Motion for Release Under Cash Bond, pp. 149-200, with annex.

²⁹ Id., Annex "E," 1st Indorsement, pp. 135-147, with annexes.

³⁰ Id., Annex "E-1," 2nd Indorsement, p. 148.

³¹ Id., Annex "G," Notice of Public Auction, pp. 201-208.

³² Id., Consolidated PFR, par. 30, p. 25.

³³ Id., Annex "H," Letter dated August 22, 2014, pp. 209-210.

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petitioners filed a Consolidated Petition for Review³⁴, which includes an Application for TRO, Status *Quo Ante* Order and/or Writ of Preliminary Injunction as well as Release Under Bond), with the Court in Division on September 1, 2014.

In a Resolution³⁵ dated September 11, 2014, the Court in Division denied petitioners' application for TRO, Status *Quo Ante* Order, and/or Writ of Preliminary Injunction and Release under Bond for lack of merit. In response, petitioners filed a Motion for Reconsideration³⁶ on September 26, 2014 praying that the Court in Division reverse its September 11, 2014 Resolution and grant the reliefs prayed for, including the injunctive relief sought and the application for release. Respondents filed their Comment (On the Motion for Reconsideration dated 26 September 2014)³⁷ on October 27, 2014. However, petitioners' Motion for Reconsideration was later on denied for lack of merit in a Resolution³⁸ dated December 15, 2014.

On November 24, 2014, respondents filed by registered mail their Answer/Comment (With Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings)³⁹. This was followed by petitioners' *Ex Parte* Motion for Leave of Court to File Attached Reply [Re: Answer/Comment (With Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleading) dated 20 November 2014]⁴⁰ filed on January 21, 2015.

Thereafter, on February 12, 2015, respondents filed a Manifestation and Motion⁴¹ praying that respondents' Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings be resolved. In response, petitioners filed an Opposition [Re: Manifestation and Motion dated 10 February 2015]⁴² on February 23,

³⁴ Records, Vol. 1, Consolidated PFR, pp. 14-387, with annexes.

³⁵ *Id.*, Resolution, pp. 429-433.

³⁶ *Id.*, Motion for Reconsideration, pp. 440-453.

³⁷ *Id.*, Comment (On the Motion for Reconsideration dated 26 September 2014), pp. 462-474.

³⁸ *Id.*, Resolution, pp. 700-704.

³⁹ *Id.*, Answer/Comment, pp. 482-692, with annexes.

⁴⁰ Records, Vol. 1, Ex Parte Motion for Leave of Court to File Attached Reply [Re: Answer/Comment (With Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleading) dated 20 November 2014], pp. 723-777, with attachment.

⁴¹ *Id.*, Manifestation and Motion, pp. 778-783.

⁴² *Id.*, Vol. 2, Opposition [Re: Manifestation and Motion dated 10 February 2015], pp. 786-797.

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On April 29, 2015, the Court in Division issued a Resolution⁴³ dismissing the Petition therein for lack of jurisdiction and declaring moot respondents' Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings. The dispositive portion of the April 29, 2015 Resolution reads:

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of jurisdiction. Consequently, respondents' "Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings" is hereby rendered **MOOT**.

SO ORDERED.⁴⁴

On June 2, 2015, petitioners filed a Motion for Reconsideration [Re: Resolution dated 29 April 2015]⁴⁵; while respondents filed a Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015)⁴⁶. However, on June 24, 2015, petitioners filed a Motion to Strike Respondents' Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015)⁴⁷.

On July 2, 2015, petitioners filed an *Ex Abundante Ad Cautelam* Opposition to Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015)⁴⁸.

On August 3, 2015, respondents filed an Opposition [To: Petitioners' Motion to Strike Respondents' Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015) dated 24 June 2015]⁴⁹ and an Opposition (To: Petitioners' Motion for

⁴³ Records, Vol. 2, Resolution, pp. 1164-1180.

⁴⁴ *Id.* at 1170; emphases retained.

⁴⁵ *Id.*, Motion for Reconsideration [Re: Resolution dated 29 April 2015], pp. 1181-1224, with annexes.

⁴⁶ *Id.*, Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015), pp. 1225-1241.

⁴⁷ *Id.*, Motion to Strike Respondents' Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015), pp. 1244-1252.

⁴⁸ *Id.*, *Ex Abundante Ad Cautelam* Opposition to Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015), pp. 1258-1272.

⁴⁹ Records, Vol. 2, Opposition [To: Petitioners' Motion to Strike Respondents' Motion for Partial Reconsideration (Re: Resolution promulgated on 29 April 2015) dated 24 June 2015], pp. 1307-1327, with annex.

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Reconsideration [Re: Resolution dated 29 April 2015] dated 02 June 2015)⁵⁰.

On September 29, 2015, petitioners filed a Motion for Leave to Admit Attached Reply to Opposition (To Petitioners' Motion for Reconsideration [Re: Resolution dated 29 April 2015] dated 02 June 2015) dated 29 July 2015⁵¹.

Meanwhile, on July 24, 2015, petitioners submitted a Motion for Inhibition⁵². On September 14, 2015, respondents filed a Comment [Re: Petitioners' Motion for Inhibition dated 24 July 2015]⁵³. In response thereto, petitioners submitted a Reply (to: Comment to Motion for Inhibition dated 08 September 2015)⁵⁴ on October 5, 2015. Thereafter, on October 30, 2015, respondents filed by registered mail a Rejoinder [To: Petitioners; Reply dated 05 October 2015]⁵⁵. On December 14, 2015, the Court in Division issued a Resolution⁵⁶ denying petitioners' Motion for Inhibition for lack of merit.

On April 1, 2016, the Court in Division issued the Assailed Resolution⁵⁷ dismissing the Petition therein with prejudice, among others. The dispositive portion of the Assailed Resolution reads:

WHEREFORE, Petitioner's [sic] Motion for Reconsideration filed on June 2, 2015, and the Motion to Strike Respondents' Motion for Partial Reconsideration filed on June 24, 2015 are hereby **DENIED**. Respondents' Motion for Partial Reconsideration filed on June 2, 2015 is hereby **GRANTED**.

Accordingly, the Resolution promulgated by this Court on April 29, 2015 is hereby **MODIFIED**. The Petition for Review filed on September 1, 2014 is hereby **DISMISSED WITH PREJUDICE**.

Petitioners are required to **SHOW CAUSE**, within fifteen

⁵⁰ Records, Vol. 2, *Opposition (To: Petitioners' Motion for Reconsideration [Re: Resolution dated 29 April 2015] dated 02 June 2015)*, pp. 1328-1348.

⁵¹ *Id.*, *Motion for Leave to Admit Attached Reply to Opposition (To Petitioners' Motion for Reconsideration [Re: Resolution dated 29 April 2015] dated 02 June 2015) dated 29 July 2015*, pp. 1384-1418, with annex.

⁵² *Id.*, *Motion for Inhibition*, pp. 1281-1305.

⁵³ *Id.*, *Comment [Re: Petitioners' Motion for Inhibition dated 24 July 2015]*, pp. 1349-1367.

⁵⁴ *Id.*, *Reply (to: Comment to Motion for Inhibition dated 08 September 2015)*, pp. 1425-1447.

⁵⁵ *Id.*, *Rejoinder [To: Petitioners; Reply dated 05 October 2015]*, pp. 1460-1468.

⁵⁶ Records, Vol. 2, *Resolution*, pp. 1473-1486.

⁵⁷ *Id.*, *Resolution*, pp. 1493-1513.

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(15) days from receipt of this Resolution, why they should not be held liable for direct contempt of court for availing of multiple judicial remedies founded on similar facts and raising substantially similar reliefs from different courts.

SO ORDERED.⁵⁸

On May 10, 2016, petitioner Galang filed an *Ex Abundante Ad Cautelam* Compliance [Re: The Honorable Court's Show Cause Order dated 01 April 2016]⁵⁹. However, on July 26, 2016, the Court in Division issued a Resolution⁶⁰ finding petitioners guilty of direct contempt of court and ordering them to pay a fine of Php2,000.00 for each petitioner. Consequently, on August 3, 2016, petitioners filed an *Ex Abundante Ad Cautelam* Manifestation with Compliance⁶¹, which was noted by the Court in Division on August 25, 2016.⁶²

Meanwhile, on April 22, 2016, petitioners filed with the Court *En Banc* a Motion for Extension of Time to File Petition for Review⁶³. The Court *En Banc* granted the same in a Minute Resolution⁶⁴ issued on April 28, 2016.

On May 6, 2016, petitioners filed the present Petition for Review⁶⁵ praying that the Assailed Resolution be reversed and set aside. In the present Petition for Review, petitioners raise the following arguments: (1) that the Court in Division erred in deciding that there is as yet no decision by respondent COC on the seizure and forfeiture proceedings over the rice shipment of petitioners; (2) that, in any case, the Court in Division has jurisdiction to entertain petitioners' Consolidated Petition for Review pursuant to *Section 7(A)(4) of Republic Act ("RA") No. 1125, as amended by RA No. 9282*, because the issues raised in the instant Petition are subject matters falling under *Sections 2301, 2530, 2601, and 2607 of the Tariff and Customs Code of the Philippines, as amended ("TCCP")*⁶⁶, *Section 4 of Customs Administrative Orders ("CAO") No. 09-93, and Section 6 of CAO No. 10-07*; and (3) that

⁵⁸ *Records, Vol. 2, Resolution, Dispositive Portion*, pp. 1512-1513; emphases retained.

⁵⁹ *Id.*, *Ex Abundante Ad Cautelam Compliance [Re: The Honorable Court's Show Cause Order dated 01 April 2016]*, pp. 1521-1534.

⁶⁰ *Id.*, *Resolution*, pp. 1539-1543.

⁶¹ *Id.*, *Ex Abundante Ad Cautelam Manifestation with Compliance*, pp. 1544-1548.

⁶² *Id.*, *Resolution*, pp. 1552-1553.

⁶³ *Rollo, Motion for Extension of Time to File Petition for Review*, pp. 1-7.

⁶⁴ *Id.*, *Minute Resolution*, p. 8.

⁶⁵ *Id.*, *PFR*, pp. 9-99, with annexes.

⁶⁶ Approved on June 22, 1957.

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petitioners are not guilty of willful and deliberate forum shopping.⁶⁷

On October 7, 2016, respondents filed its Comment⁶⁸ arguing that the Court in Division correctly dismissed the Petition *a quo* with prejudice for the following reasons: (1) the CTA has no jurisdiction over the subject matter of the case; (2) *litis pendentia* exists; and (3) petitioners are guilty of willful and deliberate forum shopping.⁶⁹

In a Resolution⁷⁰ dated October 21, 2016, the Court *En Banc* resolved to give due course to the Petition for Review.

On January 24, 2017, the case was submitted for decision in view of the filing of respondents' Manifestation [In Lieu of Memorandum]⁷¹ on December 5, 2016, and petitioners' Memorandum⁷² on December 29, 2016;⁷³ hence, this Decision.

*The Issues*⁷⁴

WHETHER THE CTA HAS JURISDICTION OVER
THE SUBJECT MATTER OF THE CASE;

WHETHER *LITIS PENDENTIA* EXISTS IN THE
CASE AT BAR;

WHETHER PETITIONERS ARE GUILTY OF
WILLFUL AND DELIBERATE FORUM SHOPPING; AND

WHETHER THE SEIZURE OF PETITIONERS' RICE
SHIPMENTS WAS LEGAL.

⁶⁷ Rollo, PFR, Discussion, pp. 20-51.

⁶⁸ *Id.*, Comment, pp. 268-318.

⁶⁹ *Id.* at 281-316.

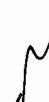
⁷⁰ *Id.*, Resolution, pp. 320-321.

⁷¹ *Id.*, Manifestation, pp. 322-325.

⁷² *Id.*, Memorandum, pp. 334-377.

⁷³ Rollo, Resolution, pp. 379-380.

⁷⁴ Rollo, Petitioner's Memorandum, Issues, pp. 343-344.



*Petitioners' Arguments*⁷⁵

Petitioners argue that the CTA has jurisdiction over the subject matter of the instant case. Through their Petition for Review, petitioners are questioning the decision of respondents relative to the detention, seizure, public auction, and refusal to release the subject rice shipments, even under cash bond. According to petitioners, the actions taken by respondents over the rice shipments partake of a final decision or ruling; and respondent COC's position, together with his order to forfeit and sell petitioners' rice shipments at public auction indubitably amount to a final decision warranting the filing of the instant Petition. Petitioners also posit that they did not pray for the nullification of *Memorandum Circular No. AO-2K13-03-003* issued by the National Food Authority ("NFA") in their Petition for Review, but merely the interpretation of the same in relation to the provisions on rice importation under the WTO-GATT.

Petitioners also contend that *litis pendentia* does not exist in the present case because there is no identity of cause of action between the present case and the cases before the RTC and the Supreme Court.

In addition, petitioners argue that they are not guilty of willful and deliberate forum shopping, as petitioners did not file two or more suits involving the same cause of action either simultaneously or successively. The Supreme Court case was filed by Secretary Alcala and the BOC, and arose from the original action for permanent injunction with prayer for TRO and/or Preliminary Injunction filed by petitioner Galang before the RTC. Further, petitioners' application for the release of their rice shipments stemmed from a right granted to them under the *TCCP* and in the April 22, 2014 Resolution of the Supreme Court.

Finally, petitioners posit that their importation of rice shipments was not illegal and the release of the same was not enjoined by the Supreme Court.

*Respondents' Counter-Arguments*⁷⁶

On the other hand, respondents counter that the CTA has no

⁷⁵ Rollo, *Petitioner's Memorandum, Discussion*, pp. 344-374.

⁷⁶ *Id.*, *Comment, Discussion*, pp. 281-316.

jurisdiction over the subject matter of the case for the following reasons: (1) petitioners have not shown that respondent COC has rendered a decision on any of the issues raised in their appeal before the Petition *a quo*; (2) pleadings filed by respondents could never amount to a final decision reviewable by the Court; (3) reliance by petitioners on *Auyong Hian v. CTA*⁷⁷ is misplaced; and (4) the Court has no jurisdiction to nullify an administrative circular issued by the NFA.

Moreover, respondents argue that *litis pendentia* exists in the present case, as the cases pending before the Supreme Court and the RTC have all the necessary points of similarity present – parties, rights asserted, issues, and reliefs sought. In addition, being the final arbiter of all legal disputes, the Supreme Court’s decision on the merits will amount to *res judicata* on all similar cases, including the present case.

Finally, respondents allege that petitioners are guilty of willful and deliberate forum shopping, as all the elements therefor are present.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

The Court in Division ruled in its April 29, 2015 Resolution that the Petition therein should be dismissed for lack of jurisdiction. According to the Court in Division, the records are bereft of any evidence that the COC issued a final decision or ruling on the seizure and forfeiture proceedings relating to petitioners’ rice shipments. Accordingly, the dismissal of the Petition therein was warranted as the same was prematurely filed, and the Court in Division did not acquire jurisdiction over the subject matter of the case.

Subsequently, in the Assailed Resolution, the Court in Division modified its April 29, 2015 Resolution and ruled that the Petition therein should be dismissed with prejudice. The Court in Division held that in the present case, the BOC was still in the process of seizure and forfeiture of the rice shipments, and had not yet decided on the same with finality. The Court in Division further held that petitioners are guilty of willful and deliberate forum shopping.

⁷⁷ G.R. No. L-28782, November 27, 1981.

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Section 1, Rule 9 of the Revised Rules of Court (“RROC”) enumerates the grounds when courts may dismiss claims, to wit:

Sec. 1. *Defenses and objections not pleaded.* – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.⁷⁸

Accordingly, the CTA may dismiss an action *motu proprio* if any of the following appears from the pleadings or the evidence on record:

1. Lack of jurisdiction over the subject matter;
2. *Litis pendentia*;
3. *Res judicata*; or
4. Prescription.

In the present case, the CTA has no jurisdiction over the subject matter. Hence, the Court in Division properly held in its April 29, 2015 Resolution that the petitioner therein was prematurely filed. Nevertheless, assuming the present case falls under “other matters” arising from the *TCCP*, the present Petition for Review should still be dismissed by virtue of *litis pendentia*. Further, with the presence of the elements of *litis pendentia*, forum shopping exists.

The foregoing grounds for dismissal shall be discussed in *seriatim*.

Jurisdiction is conferred by law and is the capacity of a court to

⁷⁸ Underscoring ours.

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“entertain, hear, and determine certain controversies.”⁷⁹ The CTA, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction.⁸⁰

Section 7(a)(4) of RA No. 1125, as amended⁸¹, provides that the CTA has exclusive appellate jurisdiction to review, by appeal, decisions of the COC involving seizure and detention of property, or other matters arising under the TCCP, as follows:

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

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

xxx xxx xxx

(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;⁸²

Meanwhile, Section 3(a)(4), Rule 4 of the Revised Rules of the Court of Tax Appeals⁸³ implements the foregoing by stating that the CTA in Division, has exclusive original or appellate jurisdiction to review by appeal the decisions of the COC involving seizure and detention of property, or other matters arising under the TCCP, to wit:

Sec. 3. *Cases within the jurisdiction of the Court in Divisions.*

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The Court in Divisions shall exercise:

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

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⁷⁹ *Guy v. Court of Appeals*, G.R. Nos. 165849, 170185, 170186, 171066 & 176650, December 10, 2007, 539 SCRA 584.
⁸⁰ *CIR v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014, 718 SCRA 513.
⁸¹ June 16, 1954.
⁸² Underscoring ours.
⁸³ A.M. No. 05-11-07-CTA (2005).

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(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures of other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;⁸⁴

A review of the records shows that petitioners prematurely filed the Petition with the Court in Division. Petitioners filed the Petition therein without waiting for the COC's decision on the seizure and forfeiture proceedings as regards the rice shipments. In fact, petitioners even admitted that administrative remedies were available to them before resorting to judicial remedies. The relevant portion of petitioners' Petition for Review before the Court in Division states:

19. In view of this impending auction of Petitioners' rice shipments, there is clearly urgency of judicial intervention. Simply stated, there is no plain, speedy and adequate remedy under the law, except through the relief obtained from this Honorable Court.

20. To require the Petitioners to go through the following time-consuming process:

(a) Participate in the seizure proceedings at the Law Division which may draft the Decision of forfeiture for the signature of the District Collector on the ground that rice importation is prohibited although the latest *Bangko Sentral ng Pilipinas (BSP)* does not even include rice among the lists of prohibited and regulated articles but only classified as regulated under the previous *BSP Circular* which may be the subject of settlement of the case pursuant to *Customs Administrative Order [No.] 4-94*.

(b) File a Notice of Appeal and then Appeal Memorandum. It cannot be denied that the appeal process will take a lot of time simply because the internal procedure at the Office of the Commissioner is multi-level and without time limit. The first level is at the Appellate Division where the appeal is initially handled by an Attorney for review by the Assistant Chief and thereafter the Chief. The next level is the Office of the Director of the Legal Service wherein the appeal is handled by the reviewer or Chief of Staff and then the Director. The next level is the Office of the Deputy Commissioner for

⁸⁴ Underscoring ours.

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Revenue Collection Monitoring Group (RCMG) wherein the appeal is handled by the reviewer or Chief of Staff and then the Deputy Commissioner. The last level is the Office of the Commissioner (OCOM) proper wherein the appeal is handled by the reviewer/lawyer, the Chief of Staff and finally the Commissioner who is certain to affirm the forfeiture Decision.

(c) After receipt of the Commissioner's forfeiture Decision, the next step would be to file [a] Petition for Review with this Honorable Court.

will be an exercise in futility because the final and inescapable outcome will ALWAYS be a Decision of forfeiture by the Respondent Commissioner of Customs.⁸⁵

Considering the COC had yet to render a decision on the seizure and forfeiture proceedings of petitioners' rice shipments, the Petition for Review filed with the Court in Division was prematurely filed. The Court, as yet, had nothing to review.

Consequently, the Court in Division properly ruled in its April 29, 2015 Resolution that the Petition therein should be dismissed for lack of jurisdiction over the subject matter. The relevant portion of said Resolution provides:

It can therefore be deduced from the foregoing that there is as yet no decision by the respondent Commissioner on the seizure and forfeiture proceedings over the subject rice shipments. Consequently, as respondents correctly observed, petitioners merely speculate and expect that respondent Commissioner will rule unfavourably against them. Clearly then, the premature filing of the instant petition warrants a dismissal as no jurisdiction is acquired by this Court over the subject matter of the case.⁸⁶

Assuming *arguendo* the COC's action in setting a public auction for petitioners' rice shipments can be deemed the COC's decision appealable to the CTA (*i.e.*, an instance falling under "other matters" arising from the TCCP), the Petition for Review in the present case must still fail as the elements for *litis pendentia* are attendant.

⁸⁵ Records, Vol. 1, PFR, pp. 23-24.

⁸⁶ *Id.*, Vol. 2, Resolution, p. 1169.

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In *Hanopol v. Shoemart, Inc.*⁸⁷, the Supreme Court laid down the bases for *litis pendentia* and forum shopping as grounds for dismissal of actions, thus:

All the three (3) elements for *litis pendentia* as a ground for dismissal of an action are present, namely: (a) identity of parties, or at least such parties who represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity, with respect to the two (2) preceding particulars in the two (2) cases, in such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.

In the case at bench, the parties are the same; the relief sought in the case before the Court of Appeals and the trial court are the same, that is, to permanently enjoin the foreclosure of the real estate mortgage executed by spouses Hanopol in favor of Shoemart; and, both are premised on the same facts. The judgment of the Court of Appeals would constitute a bar to the suit before the trial court.

It has been held that where a litigant sues the same party against whom the same action, or actions, for the alleged violation of the same right, and the enforcement of the same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the other, and a final judgment in one would constitute *res judicata* and thus, would cause the dismissal of the rest. Spouses Hanopol may not simply ignore a prior action and bring a second, independent action on the same set of facts while the original action is pending.

Inasmuch as the elements of *litis pendentia* are present, forum shopping exists. Forum shopping is the institution of two (2) or more actions or proceedings on the same cause on the supposition that either one or the other court would make a favorable disposition. A party is not permitted to pursue simultaneous remedies in two (2) different courts. This is a practice which ridicules the judicial process, plays havoc with the rules on orderly procedure, and is vexatious and unfair to the other parties to the case.⁸⁸

⁸⁷ G.R. Nos. 137774 & 148185, October 4, 2002, 390 SCRA 439.

⁸⁸ Underscoring ours.

Applying the foregoing principles to the cases filed with the RTC and the Court in Division, it is evident that the elements for *litis pendentia* are present, as follows:

1. The parties in both cases are substantially the same;
2. The relief sought before the RTC and the CTA are the same, *i.e.*, to enjoin respondents from continuing with the seizure and forfeiture proceedings and to declare the rice shipments legal, which are both premised on the same facts; and
3. The final disposition in either the RTC or the CTA case will constitute a bar to the other suit.

With the presence of the elements for *litis pendentia*, the Court *En Banc* likewise finds that there exists willful and deliberate forum shopping.

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

The Supreme Court discussed the nature and rationale of forum shopping in *Municipality of Taguig v. Court of Appeals*⁸⁹ wherein it held:

Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.

What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.

⁸⁹ G.R. No. 142619, September 13, 2005, 469 SCRA 588.

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Forum shopping is contumacious, as well as an act of malpractice that is proscribed and condemned as trifling with the courts and abusive of their processes. It is improper conduct that degrades the administration of justice. . .

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Thus, a party's willful and deliberate act of forum shopping is punishable by summary dismissal of the actions filed.

In the case at bar, petitioners blatantly engaged in forum shopping. The records bear that petitioners sought similar reliefs based on the same facts when it filed the subsequent Petition with the Court in Division, notwithstanding the pending actions in the RTC and the Supreme Court.

Suffice it to say, the present Petition for Review lacks merit. The dismissal of the Petition by the Court in Division was, thus, proper. Accordingly, the Court *En Banc* upholds the findings of the Court in Division in the Assailed Resolution when the latter ruled, as follows:

Indeed, petitioners have committed forum-shopping, by willfully and deliberately going to different courts to avail themselves of multiple judicial remedies founded on similar facts and raising substantially similar reliefs.

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Thus, the subsequent filing of the Petition for Review before this Court is a blatant disregard of the Supreme Court *En Banc*'s Resolution, which specifically enjoined petitioners Galang and Souza from undertaking any and all actions with respect to the subject rice shipments and any rice shipments similarly situated.

This Court takes note of the fact that petitioners filed their Petition for Review before this Court after a Petition for *Certiorari* was filed before the Supreme Court. Petitioners' cause of action is anchored on the validity of *NFA Memorandum Circular* [No.] AO-2K13-03-003. By seeking to nullify the said *NFA Memorandum Circular*, petitioners trifled with court

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processes and exposed the courts to the possibility of rendering conflicting decisions. Worse, petitioners sought to accomplish what is prohibited – filing of the Petition for Review before this Court when expressly enjoined by the Supreme Court to do so. Thus, it matters not that the factual findings and conclusions of law of this Court and the Supreme Court may concur. It is the fact that our judicial system is rendered vulnerable to such uncertainties and vexations that any and all efforts to forum shop should be treated with aversion.

These actuations do not manifest good faith on the part of petitioners. Instead, these incidents indicate an obsession to transfer the case to another court to enable them another chance to obtain a favorable resolution, and [] constituted deliberate forum shopping.

Petitioners' brazen and deliberate acts of repeated forum shopping in all stages of litigation are written all over this case. All the foregoing mentioned, there is clandestine intent on the part of petitioners to violate the rules against forum shopping.⁹⁰

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the April 29, 2015 and April 1, 2016 Resolutions of the Court of Tax Appeals First Division are hereby **AFFIRMED**.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

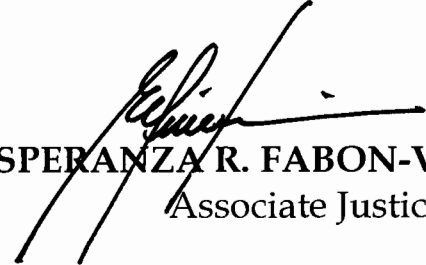
⁹⁰ *Records, Vol. 2, Resolution, pp. 1506, 1511-1512.*

ON LEAVE

JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.


ROMAN G. DEL ROSARIO
Presiding Justice