

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

**DANILO G. GALANG, doing CTA CASE NO. 8885
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, Members:

-versus-

DEL ROSARIO, *Chairperson*
UY, and
MINDARO-GRULLA, *JJ.*

**THE BUREAU OF CUSTOMS
AND THE COMMISSIONER OF
CUSTOMS,**

Promulgated:

Respondents.

APR 29 2015 : 1:07p.m.

X-----X

RESOLUTION

Submitted for the Court's Resolution are the following:

1. Respondents' "Answer/Comment (with Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings)" with 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 Pleadings) dated 20 November 2014]" filed on November 26, 2014 and January 21, 2015, respectively; and
2. Respondents' "Manifestation and Motion" with petitioners' Opposition thereto filed on February 12, 2015 and February 23, 2015, respectively.

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In their motion, respondents raise the following grounds for the dismissal of the petition, to wit:

"I. The Honorable Court has no jurisdiction over the subject matter of the case.

A. Respondent Commissioner of Customs has yet to issue a decision or resolution that may be subject of an appeal to the Honorable Court.

B. The Honorable Court has no jurisdiction to nullify an administrative circular issued by the National Food Authority.

II. There are cases pending with the Supreme Court and the Regional Trial Court in Manila involving the same parties, issues and causes of action.

III. Petitioners are guilty of wilful and deliberate forum shopping.

IV. The rice shipments cannot be released for the importation is prohibited by law, and is enjoined by the Supreme Court in *Alcala*.

A. The Supreme Court in *Alcala* barred the release of the same rice shipments.

B. Under the TCCP, no article the importation of which is prohibited by law will be released under any circumstance.

C. The rice shipments have been sold in auction, rendering the relief sought moot.

V. Judicial deference dictates that the Honorable Court and the parties submit to the authority of the Supreme Court, await its decision and abide by its ruling."¹

On the other hand, petitioners in their Reply² allege that:

1. The Honorable Court has jurisdiction over the subject matter of the instant case.

2. The principle of *litis pendentia* does not exist in this case.

3. Petitioners are not guilty of wilful and deliberate forum shopping.

¹ Respondents' Answer/Comment posted on November 24, 2014, pp. 12-13.

² Filed on January 21, 2015.

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4. The importation of petitioners' rice shipments was not illegal and the release of the same was not enjoined by the Supreme Court.
5. The Supreme Court case is not determinative of the outcome of the instant case.
6. The waiver decision issued by the General Council of the WTO has no retroactive effect.

We resolve to dismiss the instant petition.

It must be borne in mind that the Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.³ Pursuant to Section 7 (a) (4) of **Republic Act No. 9282**,⁴ amending **Republic Act No. 1125**,⁵ this Court has jurisdiction over 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.

Corollary thereto, Section 3 of Rule 4 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, specifically includes the decision of the Commissioner of Customs as one of the cases falling within the jurisdiction of the Court of Tax Appeals in Division, to wit:

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

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

xxx

(4) **Decisions of the Commissioner of Customs** in cases involving liability for custom duties, fees or other money charges, seizure, detention or release of property affected, fines,

³ *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

⁴ An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes.

⁵ An Act Creating The Court Of Tax Appeals.

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forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs; [Emphasis supplied.]

In ***Ace Publications, Inc. v. The Commissioner of Customs, et al.***,⁶ the Supreme Court emphasized that the filing of the petition for review before the Court of Tax Appeals is premature in the absence of a final decision of the Commissioner of Customs. We quote:

"That there is no decision or ruling by the Collector of Customs or Commissioner of Customs on the requests of appellant for refund, is abundantly clear from the very allegations in the petition. Pursuant, therefore, to the above ruling of this Court, the presentation of the Petition for Review with the CTA was premature, for as things stood then, there was nothing to review." [Emphasis supplied.]

The same principle was echoed in a later case of ***Chia v. Acting Collector of Customs, et al.***,⁷ wherein the Supreme Court re-emphasized that the taxpayer's failure to exhaust the available administrative remedies renders his judicial appeal dismissible for being prematurely filed. Thus:

"A party dissatisfied with the decision of the Collector may appeal to the Commissioner of Customs, whose decision is appealable to the Court of Tax Appeals in the manner and within the period prescribed by law and regulations. The decision of the Court of Tax Appeals may be elevated to the Supreme Court for review (Secs. 2309-2316; 2401 & 2402 of the Tariff and Customs Code; Collector of Customs vs. Torres, et al., 45 SCRA 272).

Since petitioner did not exhaust his administrative remedies, his recourse to this Court is premature (Acting Collector of Customs of the Port of Manila vs. Caluag, 20 SCRA 204; Laganapan vs. Asedillo, 154 SCRA 377; National Development Co. vs. Hervilla, 151 SCRA 520). **If for no other reason, the petition is dismissible on that score.**"⁸ [Emphasis supplied.]

⁶ G.R. No. L-18808, May 29, 1964.

⁷ G.R. No. L-43810, September 26, 1989.

⁸ *Id.*

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It bears stressing that **Section 602(g) of the Tariff and Customs Code of the Philippines** (TCCP) specifically empowers the Bureau of Customs to exercise exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws. Thus, "[u]pon effecting the seizure of the goods, the Bureau of Customs acquired exclusive jurisdiction not only over the case but also over the goods seized for the purpose of enforcing the tariff and customs laws."⁹ Clearly then, "the prevailing doctrine is that the exclusive jurisdiction in seizure and forfeiture cases vested in the Collector of Customs precludes a court of instance [now the Court of Tax Appeals] from assuming cognizance over such a matter."¹⁰

In their petition, petitioners allege that the instant case is being filed under the exceptions to the rule on exhaustion of administrative remedies as the actions taken by respondent Commissioner and the Bureau of Customs over petitioners' rice shipments partake of a final decision or ruling. Petitioners opine that respondents' attempt to publicly auction their rice shipments despite the pendency of the proceedings before the Bureau of Customs Law Division; and their refusal to release the subject rice shipment despite petitioners' filing of the Consolidated Motion for Release under Cash Bond is patently illegal amounting to lack or excess of jurisdiction, which necessarily requires urgent judicial intervention.

In order to bolster their stance, petitioners cite the case of **Allied Banking Corporation vs. Commissioner of Internal Revenue**¹¹ (the "*Allied Banking Case*") in order to justify their premature recourse to this Court as an exemption to the rule on exhaustion of administrative remedies.

We are not persuaded.

A careful perusal of the Supreme Court's decision in *Allied Banking Case* readily reveals that the same is not on all fours with the instant case. In the said case, while the taxpayer failed to administratively protest the Formal Letter of Demand with Assessment Notices (FLD), the Supreme

⁹ *Id.*

¹⁰ *Enrile, et al. v. Vinuya, et al.*, G.R. No. L-29043, January 30, 1971.

¹¹ G.R. No. 175097, February 5, 2010.

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Court considered the FLD as a final decision of the Commissioner of Revenue (CIR) appealable to the CTA because the words used therein, specifically the words "final decision" and "appeal", taken together led the taxpayer to believe that the FLD was in fact the final decision of the CIR on the letter-protest it filed when it disputed the Preliminary Assessment Notice and that the available remedy was to appeal the same before the CTA. Thus, the Supreme Court held that the circumstance of the case is an exception to the rule on exhaustion of administrative remedies on the ground of estoppel on the part of the administrative agency concerned.

In contrary, this involves seizure and forfeiture proceedings pursuant to the TCCP and not tax deficiency assessment under the National Internal Revenue Code (NIRC). Moreover, nowhere in the instant petition does it appear that the respondent Commissioner issued any final decision or ruling on the seizure and forfeiture proceedings relating to petitioners' seized rice shipments. In fact, petitioners outlined the administrative remedies available to them before resorting to judicial appeal before this Court.¹² While admitting that the respondent Commissioner has yet to make a decision over the pending proceedings before the Law Division of the Bureau of Customs, petitioners insist that participating in the seizure proceedings therein and going through the appeal process of the Bureau 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."¹³

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.¹⁴ 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.

¹² Par. 20, Consolidated Petition for Review filed on September 1, 2014, Docket, Vol. 1, pp. 10-11.

¹³ Par. 20 & 184, Consolidated Petition for Review filed on September 1, 2014; Division Docket, Vol. 1, pp. 23-24; 68.

¹⁴ Par. 34, Respondents' Answer/Comment posted on November 24, 2014.

In view of our foregoing disquisitions, there is no longer a need to still delve into and resolve the other issues raised in the said petition and motions filed by the parties.

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.


(with Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

REPUBLIC OF THE PHILIPPINES
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doing business under the name
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GRAINS ENTERPRISES and
IVY M. SOUZA, doing business
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BOLD BIDDER MARKETING
AND GENERAL MERCHANDISE,
Petitioner,

-versus-

CTA CASE NO. 8885

Members:

Del Rosario, Chairperson
Uy, and
Mindaro-Grulla, *JJ.*

THE BUREAU OF CUSTOMS
AND THE COMMISSIONER OF
CUSTOMS,

Respondents.

Promulgated:

APR 28 2015 ; 1:07 p.m.

X -----X

SEPARATE CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur in the dismissal of the petition for review on the ground of forum shopping.

Records disclose that petitioner Danilo G. Galang instituted a Complaint for Permanent Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the 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 Port of Manila, North and South Harbor.¹ The case was docketed as **Civil Case No. CV-14-131261** with Branch Eleven, National Capital Judicial Region, Regional Trial Court (RTC) in Manila. In that Complaint, petitioner Galang claimed that he made dealings with petitioner Ivy M. Souza, who is a rice trader, importer and sole proprietress of Bold Bidder Marketing and General Merchandise. Allegedly, in the course of processing the release of rice shipments, he was informed by petitioner Souza that the BOC refused to release, and threatened to seize the rice

¹ Docket, pp. 329-372.

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shipments for lack of import permit pursuant to NFA Memorandum Circular AO 2K13-03-003.² He argued, among others, that NFA Memorandum Circular is invalid and contrary to international law; and that WTO-GATT prevails over Republic Act No. 8178, which is the law from which NFA draws its basis in requiring import permits for rice importation. Petitioner Galang sought the following reliefs from the RTC, viz.:

“WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that:

1. Upon the filing of this Petition, an ex parte Temporary Restraining Order (TRO) be immediately issued against the Defendants effective for seventy-two (72) hours to enjoin and restrain them, all those acting for and in their behalf, and all their agents and responsible officers, from:

- a. Implementing NFA Memorandum Circular No. AO-2K13-003;
- b. Seizing, alerting, and/or holding Plaintiff's rice shipments referred in this Petition, and those shipments, similarly situated as those 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
- 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

2. After a summary hearing thereon, the Temporary Restraining Order (TRO) be extended for twenty (20) days until the application for Preliminary Injunction can be heard;

3. Pending trial on the merits, **the Honorable Court issue a Writ of Preliminary Injunction enjoining and restraining Defendants, all those acting for and in their behalf, and all their agents and responsible officers from:**

- a. **Implementing NFA Memorandum Circular No. AO-2K13-003;**
- b. **Seizure, alerting, and/or holding Plaintiff's rice shipments referred in this Petition, and those shipments, similarly situated as those in this Petition, which the Plaintiff may acquire by sale or by importation after the filing of this Petition;**

² Docket, p. 331-333.

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- 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;
- d. **Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.**

4. After trial on the merits and hearing, **the Honorable Court render a Decision perpetually enjoining Respondents from committing the above-mentioned acts.**

Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for." (Emphasis supplied)

On January 23, 2014, the RTC issued an Order granting the issuance of a writ of preliminary injunction enjoining and restraining therein defendants and all persons acting for and in their behalf from (a) implementing NFA Memorandum Circular No. AO-2K13-003; (b) seizing, alerting, and/or holding plaintiff's rice shipments; (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; and (d) doing any act that would prejudice plaintiff while the propriety and validity of its actions are still at issue and subject to judicial determination. A Writ of Preliminary Injunction was eventually issued on January 24, 2014.³

On February 27, 2014, acting on petitioner Galang's Motion to Amend Writ of Preliminary Injunction (including the 23 January 2014 Order) dated February 21, 2014, the RTC issued an Order granting the afore-stated motion.⁴ The said February 27, 2014 Order amended the dispositive portion of the January 24, 2014 Writ of Preliminary Injunction to read as follows:

"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 restrained from 1) implementing NFA Memorandum Circular No. AO-2K13-03-003; 2) seizing, alerting, and/or holding **BOLD BIDDER MARKETING AND GENERAL MERCHANDISE** and/or plaintiff's rice shipments referred in this petition,

³ Docket, pp. 373-377.

⁴ Paragraph 2.3, Statement of Material Dates, Petition for Certiorari, Docket, p.216.

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and those shipment similarly situated in the petition which the plaintiff may acquire by sale or by importation after the filing of this petition; 3) implementing any Alert Orders, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or 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 BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination."⁵

The February 27, 2014 Order of the RTC further reads as follows:

"Further, defendants, Bureau of Customs, the District Collectors of the Ports of Manila, North 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 particularly Chief Pacol Rasuman, Assistant Chief Alexander Likawat, Chief Maria Teresa Agabao, Voltaire Azaña, Assistant Chief Terencion, District Collector Elmir Dela Cruz all of the North Harbor / Manila International Container Port and Chief Blesilda Balagtas, Chief Cornelia Casiano, District Collector Mario Mendoza all of the South Harbor, are hereby directed to comply with this Court's orders within forty eight (48) hours from receipt of this order and to submit a verified written report within the same period."⁶

Subsequently, the RTC issued an Amended Order on February 28, 2014, the dispositive portion of which reads:

"WHEREFORE, foregoing premises considered, let a writ of preliminary injunction be issued in favor of BOLD BIDDER MARKETING AND GENERAL MERCHANDISE, from whom plaintiff Danilo G. Galang doing business under the name and style St. Hildegard Grains Enterprises, bought the rice shipments subject matter of this case, 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 BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipments referred in this petition and those shipments similarly situated in the 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 issuance and/or refusing to lift any such orders or issuance in relation to BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the

⁵ Paragraph 2.3.1, Statement of Material Dates, Petition for Certiorari, Docket, p. 217.

⁶ Paragraph 2.3.2, Statement of Material Dates, Petition for Certiorari, Docket, p. 217.

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plaintiff may acquire by sale or by importation after the filing of this Petition; and **d)** doing any act that would prejudice BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.”⁷

As a consequence, the Bureau of Customs (represented by Commissioner John Philip P. Sevilla), together with Secretary Proceso J. Alcala (of the Department of Agriculture and as Chairman of the National Food Authority Council), elevated the afore-mentioned Orders and the Writ of Preliminary Injunction issued by the RTC in Civil Case No. CV-14-131261 to the Supreme Court *via* a Petition for Certiorari (with Application for Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction) which was docketed as **G.R. No. 211375**.⁸

The Petition for Certiorari seeks, among others, the following: (a) annulment of the afore-said Orders and the Writ issued by the RTC in Civil Case No. CV-14-131261; (b) issuance of a decision dismissing the Complaint for Permanent Injunction *a quo* and upholding the validity of NFA Memorandum Circular No. AO-2K13-03-003.

In a Resolution dated March 18, 2014, the Supreme Court *En Banc* adopted a Resolution in G.R. No. 211375 stating, *inter alia*, the following (1) enjoining the RTC from implementing the assailed Orders and Writ and from proceeding with Civil Case No. CV-14-131261; **(2) directing Danilo G. Galang and Ivy M. Souza from undertaking any and all actions with respect to the subject rice shipments and any rice shipments similarly situated as those in the case *a quo* which they may acquire by sale or by importation after the filing of the case *a quo*.** The pertinent portion of said Supreme Court *En Banc* Resolution dated March 18, 2014 reads as follows:

“WHEREAS, the Supreme Court, on March 18, 2014, adopted a resolution in the above-entitled case, to wit:

G.R. No. 211375 (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 vs. 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).- Acting on the Petition for Certiorari with Application for Temporary

⁷ Paragraph 2.3, Statement of Material Dates, Petition for Certiorari, Docket, p. 216.

⁸ Docket, p. 211.

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Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction, the Court resolved, without giving due course to the petition, to

(a) REQUIRE the respondents to COMMENT on the petition within ten (10) days from notice hereof;

(b) ISSUE the TEMPORARY RESTRAINING ORDER prayed for, effective immediately and continuing until further orders from this Court, **enjoining the (1) court a quo from 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; (2) court a quo from proceeding with the case a quo (Civil Case No. CV-14-131261); and (3) private respondents Danilo G. Galang and Ivy M. Souza 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 they may acquire by sale or by importation after the filing of the case a quo; and**

(c) CONSOLIDATE this case with G.R. No. 211146 (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 vs. Hon. Emmanuel C. Carpio, in his capacity as Presiding Judge of Branch 16, Regional Trial Court in Davao City and Joseph Mangupag Ngo). Perlas-Bernabe, J., on official leave.

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.**⁹
(Emphasis supplied)

⁹ Docket, pp. 378-381.

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Notwithstanding the explicit and unequivocal order of the Supreme Court *En Banc*, petitioners Galang and Souza still filed the present Petition for Review (**CTA Case No. 8885**) praying for the following reliefs from this Court, to wit:

“WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that:

1. Upon the filing of this Complaint, an ex parte Temporary Restraining Order (TRO)/writ of preliminary injunction be immediately issued against the Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from conducting any public auction concerning the rice shipments subject herein whether with the MICP or POM, and from doing any acts that would prejudice Petitioner while the propriety and validity of its actions are still at issue and subject to judicial determination;

2. Pending trial on the merits, the Honorable Court issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from:

a. Selling or otherwise disposing the subject property, and

b. From doing any acts that would prejudice Petitioner while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination; and,

3. Pending trial on the merits, the Honorable Court issue an order releasing the subject rice shipments upon posting of a bond by the Petitioners in an amount equivalent to the value of the subject rice shipments as assessed and valued by the BOC and payment of the 50% out-quota tariff due on the subject rice shipments, including the demurrage and storage charges thereon, and DIRECTING THE BOC to accept and process the payments, and to immediately release all the rice shipments, which are highly perishable goods.

4. **After trial on the merits and hearing, judgment be rendered making said Preliminary Injunction permanent, declaring the importation of Petitioner’s rice shipments as legal**, and ordering the return of any bond posted by the Petitioners in relation to the instant proceedings, **or ordering the release of any rice shipments** being still in the custody of the Respondents.

Such other relief and remedies as may be deemed just and equitable under the premises are likewise prayed for.” (Emphasis supplied)

In the present Petition for Review, petitioners Galang and Souza argue, among others, that there is no reason for the BOC to refuse the release

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of the goods since WTO-GATT Agreement permits the importation of goods in the absence of quantitative restrictions but with the payment of proper tariffs, and NFA Memorandum Circular AO-2K13-03-003 is void because it was not filed with the University of the Philippines Law Center.

I note that the filing of the present Petition for Review is a blatant disregard of the Supreme Court *En Banc*'s Resolution dated March 18, 2014 in G.R. No. 211375 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.

After carefully reviewing the records of the case, I cannot ignore petitioner's violation of the rule on non-forum shopping, and the presence of the elements of *litis pendentia*.

Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different fora, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.¹⁰ What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.¹¹

Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: **(1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of**

¹⁰ *Spouses Arevalo vs. Planters Development Bank, et al.*, G.R. No. 193415, April 18, 2012.

¹¹ *Id.*

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which party is successful, would amount to res judicata in the other case.¹²

Anent the identity of parties, I observe that Danilo G. Galang, the plaintiff in Civil Case No. CV-14-13126 and defendant in G.R. No. 211375, is one of the petitioners in the present case (CTA Case No. 8885). Moreover, Ivy M. Souza, one of the defendants in G.R. No. 211375, is also one of the petitioners in the present case (CTA Case No. 8885). On the other hand, the BOC, the defendant in Civil Case No. CV-14-13126¹³ and one of the petitioners in G.R. No. 211375, is one of the respondents in the present case (CTA Case No. 8885).

With regard to the identity of rights asserted and reliefs prayed for, it is notable that petitioner Galang (as plaintiff in Civil Case No. CV-14-131261) asserted before the RTC that the rice shipments were imported legally since NFA Memorandum Circular AO-2K13-03-003 is invalid and contrary to international law; and that WTO-GATT prevails over Republic Act No. 8178, which is the law from which NFA draws its basis in requiring import permits for rice importation; thus, he is entitled to the release of the subject rice shipments.

Meanwhile, in the present Petition for Review (CTA Case No. 8885), petitioners Galang and Souza similarly argue that NFA Memorandum Circular AO-2K13-03-003 is void and WTO-GATT Agreement permits the importation of goods in the absence of quantitative restrictions, among others, thus, the rice shipments is legal and the same should be released.

Clearly, the alleged lawfulness of rice importations even without import permit in view of the invalidity of NFA Memorandum Circular AO-2K13-03-003 and the release of rice shipments are among the rights asserted and reliefs prayed for in both cases.

As there are similarities with respect to the parties, the rights asserted and reliefs prayed for in both cases, the possibility of conflicting decisions from different courts, which include the Supreme Court upon which the afore-stated Petition for Certiorari (docketed as G.R. No. 211375) is pending, could not be avoided. Furthermore, any judgment that may be rendered by the Supreme Court on the Petition for Certiorari involving the assailed Orders and Writ of the RTC, regardless of which party is successful,

¹² Id citing Yu v. Lim, G.R. No. 182291, 22 September 2010, 631 SCRA 172.

¹³ Through the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Port of Manila, North and South Harbor.

Separate Concurring Opinion

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would amount to *res judicata* in the present case. In view thereof, the dismissal of the present case is warranted as petitioners are guilty of forum shopping.

For all the foregoing, I vote to GRANT the Motion to Resolve Affirmative Defenses/Grounds for Dismissal of the Petition through a Preliminary Hearing and/or Submission of Additional Pleadings filed by respondents on November 24, 2014, and to DISMISS the Petition for Review filed on September 1, 2014.

A handwritten signature in black ink, appearing to read 'Roman G. Del Rosario', is positioned above the printed name.

ROMAN G. DEL ROSARIO

Presiding Justice