REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DYNAMIC LOGISTICS INTERNATIONAL CORPORATION; EXPORT SUPPLY CENTER, INC., Petitioner,	**C.T.A. CASE NO. 7036**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF CUSTOMS, Respondent.	**Promulgated:** MAY 11 2009 10:32 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review pursuant to Section 2402 of the Tariff and Customs Code of the Philippines seeking the reversal and setting aside of the undated Decision rendered by the Commissioner of Customs in the seizure cases entitled "Republic of the Philippines vs. Shipments of 310 x 20 Containers more or less, STC Rice covered by various Warehousing Entries," docketed as Seizure Identification Nos. 2002-127 to 2002-131; 2002-137 to 2002-140 [Dynamic Logistics International Corporation, Claimant]; and Seizure Identification Nos. 2002-136; 2002-141 to 2002-159 [Export Supply Center, Claimant].

FACTS

Petitioners Dynamic Logistics International Corporation and Export Supply Center, Inc. are corporations duly organized and existing under laws of the Philippines. [1] Both of which are holding office at Room G RL Reyes Building, 451 Amang Rodriguez Avenue, Manggahan, Pasig City, Metro Manila. [2]

On the other hand, respondent is the Commissioner of Customs who is duly appointed and empowered by law to perform duties of his office, including, among others, the duty to act on 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 Laws or other laws administered by the Bureau of Customs.

On different occasions in 2002, petitioners shipped rice into the country without import permits issued by the National Food Authority ("NFA"). [3]

In September 2002, the Bureau of Customs ("BOC") issued several warrants of seizure and detention all dated 11 September 2002 against petitioners' shipments of rice. [4]

Seizure Identification Nos. 2002-127 to 2002-131 and 2002-137 to 2002-140 were issued against the rice shipments of petitioner Dynamic Logistics International Corporation. [5] gr

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[1] Paragraph 1.01, *JOINT MOTION FOR APPROVAL OF THE PARTIES' JOINT STIPULATION OF FACTS AND ISSUES*, *Rollo*, pp. 320 to 325.
[2] Petitioner's Memorandum, *Rollo*, p. 1015.
[3] Paragraphs 1.02, 1.02.1, *JOINT MOTION FOR APPROVAL OF THE PARTIES' JOINT STIPULATION OF FACTS AND ISSUES*, *Rollo*, p. 320.
[4] Par. 1.03, *Ibid.*, *Rollo*, p. 321.
[5] Par. 1.03.1, *Id.*, *Rollo*, p. 321.

Meanwhile, Seizure Identification Nos. 2002-132 to 2002-136 and 2002-141 to 2002-159 were issued against the rice shipments of petitioner Export Supply Center, Inc. [6]

On 26 September 2002, the four seizure cases were consolidated by agreement of the parties. [7]

On 21 October 2002, petitioners filed motions to quash the writs of seizure and detention issued against the said rice shipments. [8]

The Collector of Customs for the Port of Manila, Napoleon L. Morales, issued an Order dated 06 March 2003 denying petitioner's motion to quash, and directing the parties to present their respective evidence during hearings to be set for said purpose. [9]

By agreement of the parties during the hearing on 19 May 2003, trial was dispensed with and in lieu of trial, the parties agreed to submit the case for resolution by the BOC's Law Division based on the parties' respective position papers and other supporting documents. [10]

To prevent the spoilage of the seized rice shipments, the same were sold at public auction and herein parties are seeking the proceeds of the same. [11]

During the pendency of the case before the BOC, petitioners sought to settle the forfeiture proceedings. On 05 February 2004, petitioner Dynamic Logistics filed a Manifestation of Intention to Settle Pending Forfeiture

[6] Par. 1.03.2, *Id., Rollo*, p. 321.
[7] Par. 1.04, *Id., Rollo*, p. 321.
[8] Par. 1.05, *Id., Rollo*, p. 321.
[9] Par. 1.06, *Id., Rollo*, p. 321.
[10] Par. 1.07, *Id., Rollo*, p. 321.
[11] Par. 1.08, *Id., Rollo*. p. 322.

Proceedings [12] in the pending seizure and detention case with Seizure Identification Nos. 2002-127 to 2002-131.

On the same date, petitioner Dynamic Logistics filed a similar Manifestation of Intention to Settle Pending Forfeiture Proceedings[13] in the pending seizure and detention cases with Seizure Identification Nos. 2002-137 to 2002-140.

Similar Manifestations of Intention to Settle Pending Forfeiture Proceedings [14] were filed by petitioner Export Supply Center, Inc. in the pending seizure and detention case with Seizure Identification Nos. 2002-132 to 2002-136 and Seizure Identification Nos. 2002-141 to 2002-159.

Through an undated Consolidated Decision, District Collector of Customs Atty. Ronnie Silvestre granted the settlement. [15]

However, upon submission of the same to respondent, in an undated Decision,[16] the latter reversed the earlier consolidated decision and denied petitioner's offer of settlement, and likewise ordered the forfeiture of the proceeds from the auction of petitioner's rice shipments. [17]

On August 12, 2004, the instant PETITION FOR REVIEW was filed with this Court.

In an Answer (With Counterclaim) [18] filed on November 8, 2004, respondent alleged the following affirmative defenses and his counterclaim— gc

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[12] Exhibit "K", *Rollo*, p. 583.
[13] Exhibit "L", *Rollo*, p. 590.
[14] Exhibit "M", *Rollo*, p. 597; Exhibit "N", *Rollo*, p. 604.
[15] Par. 1.10, *JOINT MOTION FOR APPROVAL OF THE PARTIES' JOINT STIPULATION OF FACTS AND ISSUES*, *Rollo*, p. 323.
[16] Annex "A", Petition for Review, Rollo, pp. 35-50.
[17] Par. 1.11, *JOINT MOTION FOR APPROVAL OF THE PARTIES' JOINT STIPULATION OF FACTS AND ISSUES*, *Rollo*, p. 323.
[18] *Rollo*, pp. 273 to 277.

AFFIRMATIVE DEFENSES

5. Respondent respectfully repleads the foregoing allegations in paragraphs 1 to 4 as integral parts hereof.

6. It is undisputed that petitioner's rice importations were made without the required import permits from the National Food Authority (NFA) in violation of Section 2530 of the TCCP, as amended, the existing Memorandum of Agreement (MOA) dated August 2, 2001 between NFA and the Bureau of Customs (BOC), and Customs Memorandum Order (CMO) No. 20-2001. Hence, the forfeiture of the subject rice importations is valid.

7. Petitioner cannot successfully invoke DOJ Opinion No. 95, Series of 1994 to exempt themselves from securing the required import permits. To begin with, the said DOJ Opinion pertains only to the Philippine Export Zone Authority (PEZA)-registered firms, and not to bonded trading warehouses like petitioner Dynamic Logistics International Corporation. Besides, a DOJ Opinion cannot prevail over the provisions of the Tariff and Customs Code of the Philippines and related laws. It should be stressed that the other co-petitioner Export Supply Center, Inc. is not even a licensed bonded trading warehouse and is therefore stripped of any personality to bring this suit.

8. In the same vein, petitioners cannot seek refuge under a letter of exemption supposedly issued by NFA Assistant Administrator Jessup P. Navarro. In the first place, the existence and due execution of the said letter is doubtful. For the record, NFA Assistant Administrator Navarro has no authority to sign any letter of exemption. More importantly, the letter of exemption cannot prevail over the clear provisions of law and the issuance of then NFA Administrator Anthony Abad that such exemption could not be granted.

COUNTERCLAIM

9. Respondent respectfully repleads the foregoing allegations under paragraphs 1 to 8 inclusive as integral parts hereof.

10. Because of petitioners' unfounded action, respondent was constrained to refer this case to the Office of the Solicitor General (OSG) for legal representation, on account of which, respondent has incurred and will incur litigation expenses in the amount of not less than Three Hundred Thousand Pesos (P300,000.00).

On February 17, 2005, both petitioners and respondent filed their respective pre-trial briefs.[19]

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[19] *Rollo*, pp. 284-306.

In a Resolution dated March 31, 2005, the Court approved the Joint Motion for Approval of the Parties' Joint Stipulation of Facts and Issues," and the trial on the merits ensued. The parties presented their respective testimonial and documentary evidence.

In a Resolution dated March 13, 2009, the Court submitted the case for decision upon submission of the parties' respective memoranda.

ISSUES

As stipulated by the parties[20], the issues of the case are as follows—

1. Whether or not the rice shipments imported by petitioners require import permits from the National Food Authority ("NFA").

2. Whether or not the duties and tax exemptions given to PEZA-registered firms on their rice importations are applicable to petitioners.

3. Whether or not petitioners' rice shipments covered by Seizure Identification Nos. 2002-127 to 2002-159 may be forfeited by the Customs Commissioner.

Petitioners' Arguments

Petitioner argued that the Commissioner of Customs gravely abused his discretion and committed serious and palpable legal error in requiring petitioners to secure an import permit for their rice shipments. Petitioner invoked that the rice shipments were never intended nor were these actually sold in the domestic market and these were shipped in the country for purposes of reprocessing/repacking and re-exportation. Hence, these are not importations which would require – as in fact, the NFA did not require – an import permit from the NFA.

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[20] *JOINT MOTION FOR APPROVAL OF THE PARTIES' JOINT STIPULATION OF FACTS AND ISSUES*, *Rollo*, pp. 320-325.

Petitioners also anchored its arguments on the Department of Justice (DOJ) Opinion No. 95. [21] It contended that the spirit and letter of the said DOJ Opinion can be equally applied to Customs Bonded Warehouses like herein petitioners, considering that they are similarly situated with PEZA-registered firms in terms of importations, processing and re-exportation of rice, any exemption granted to PEZA-registered entities such as the exemption from a prior permit or authorization from the NFA should likewise be extended to customs bonded warehouses.

Further, petitioners relied in good faith on the 06 July 2000 letter [22] of then Assistant Administrator of NFA, Mr. Jessup P. Navarro to former Bureau of Customs Deputy Commissioner Julieta S. Manahan and on the 06 July 2000 letter [23] of Mr. Conrado Ibañez, Director for Marketing Operations of NFA to Manu-Trading International Corporation which exempts Customs Bonded Warehouses from securing import permits from NFA for their rice shipments. Hence, assuming that the NFA had indeed abandoned the foregoing policy, it would be unfair and unreasonable to retroactively apply the same to petitioners' rice shipments.

In addition, petitioners argued that the Commissioner of Customs erred in ordering the forfeiture of said shipments in favor of the government considering that the shipment of the subject articles was not attended by fraud.

[21] Exhibit "C", *Rollo*, pp. 573-574.
[22] Exhibit "D", *Rollo*, p. 575.
[23] Exhibit "E", *Rollo*, p. 576.

Respondent's Comment

Respondent reiterated that it is the NFA that has the exclusive authority to import rice when necessary and when authorized by the President of the Philippines under Executive Order No. 1098. As such, NFA is vested with power to establish rules and regulations on importations of rice and corn, and to license, impose and collect fees therefrom.

Respondent also cited the Memorandum of Agreement [24] (MOA) dated August 3, 2001 entered into between NFA and BOC which provided that NFA shall issue an Import Authority for every imported rice shipment. And pursuant to this MOA, the BOC issued Customs Memorandum Order (CMO) No. 20-2001[25] dated August 27, 2001 which provided that all shipments of rice imported into the country shall be covered by an Import Authority from the NFA.

THE COURT'S RULING

The instant petition is not meritorious.

First Issue: Rice Shipments by petitioners require import permits from the NFA

The rice shipments by petitioners were seized and ordered forfeited in favor of the government by the respondent Commissioner of Customs pursuant to Section 2530 (f) of the Tariff and Customs Code of the Philippines (TCCP) which provides:

> Sec. 2530.Property Subject to Forfeiture Under Tariff and Customs Laws. — Any vehicle, vessel or aircraft, cargo, article

[24] Exhibit "3", *Rollo*, pp. 921-924.
[25] Annex "4", *Rollo*, pp. 798-800.

> and other objects shall, under the following conditions, be subjected to forfeiture:
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> xxx xxx xxx
>
> 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 intended to be used as instruments in the importation or exportation of the former.
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> xxx xxx xxx

According to respondent, the failure on the part of petitioners to secure from the NFA the Import Authority for its rice shipments clearly put the same to importations "contrary to law", hence, subject to forfeiture. This is taking into account Section 2 of Executive Order (E.O.) No. 1028 which vests upon the NFA the exclusive authority to import rice when necessary and when authorized by the President of the Philippines. The pertinent provision reads:

> SEC. 2. The price of milled rice is hereby deregulated, and shall no longer be subject to price controls: *Provided, however*, That in order to ensure price and supply stability, the government, through the National Food Authority, shall, whenever necessary, engage in the procurement of palay from farmer-producers at such floor or support prices of palay or of maintaining a desirable buffer stock level: ***Provided, further*, That the National Food Authority shall continue to have the exclusive authority to import rice when necessary and when authorized by the President:** and *Provided, finally*, That the deregulation of the price of milled rice shall take effect on October 1, 1985. (Emphasis ours)

The court agrees with the respondent.

The law is clear. It is only the NFA that has the exclusive authority to import rice. As such, NFA is vested with the power to issue the necessary guidelines for the implementation of E.O. No. 1098. [26]

Moreover, by virtue of Presidential Decree (PD) No. 4, as amended, NFA is empowered to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation.[27] Pursuant to this, NFA entered into agreement with BOC in a Memorandum of Agreement (MOA) [28] dated August 3, 2001 requiring Import Authority for every imported rice shipment. The pertinent portions of the MOA read:

> 1. IMPORT AUTHORITY
>
> a) NFA shall issue an Import Authority, copy furnished BOC, for every imported rice shipment in accordance with its rules and regulations and shall designate as Port of Entry/Discharge only the District Ports, and not any sub-port or private wharf;
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> xxx xxx xxx
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> c) Upon arrival of the carrying vessel at the designated Port of Entry/Discharge, BOC shall demand from the importer/consignee/carrier the presentation of the Import Authority for the imported rice shipment; and failure to present the same or any violation thereof shall be a ground for the seizure of the shipment(s)/vessel in question, which shall then be proceeded against in accordance with law, in which case, NFA commits to extend full support and assistance to BOC in the prosecution of the case. ge

[26] Section 6 of Executive Order No. 1098.
[27] Section 6 (a) (xii), Presidential Decree No. 4.
[28] Exhibit "3", *Rollo*, pp. 861-864.

Corollarily, the BOC issued Customs Memorandum Order (CMO) No. 20-2001 dated August 27, 2001 to further implement the aforequoted MOA. It reads:

> 2. Scope
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> This Order shall apply to all shipments of rice imported into the country and all coastwise movement of all rice shipments.
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> 3. General Provisions
>
> 3.1 All shipments of rice imported into the country shall be covered by an Import Authority from the National Food Authority and the same shall be entered and discharged only in a District Port and not in any sub-port or private wharf.
>
> xxx xxx xxx
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> 4. Operational Provisions
>
> 4.1 Immediately upon arrival of rice imported into the country, the District Collector of the Port of Entry or any responsible customs official therein shall demand from the importer/consignee/carrier an Import Authority for said rice. The Import Authority shall specify the following:
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> 1. volume of rice
> 2. type and brand
> 3. country source and supplier in that country
> 4. importer/consignee
> 5. carrying vessel
>
> 4.2 In case of movement of rice from one coast to another, the Collector of the Port, where the rice is to be unloaded/discharged or any responsible customs official therein shall require from the consignee/carrier a duly issued Shipping Permit from NFA. The NFA Shipping Permit shall indicate the description of the shipment, including its origin, supplier, destination, and whether it is imported or locally sourced.
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> If the rice to be transported is imported, the Shipping Permit shall be accompanied by a copy of the Import Authority for that particular shipment and a

BOC official receipt showing that duties and taxes has been paid.

4.3 The release of rice from the Bureau of Customs shall be subject to Clearance from the Office of the Commissioner. In view thereof, the Collector shall forward to the Office of the Commissioner the Import Entry, Import Permit/Shipping Permit and other pertinent papers on every shipment of rice and shall not allow release thereof without prior Clearance from the Office of the Commissioner.

4.4 The absence of the pertinent Shipping Permit and/or Import Authority or any violation thereof shall be a ground for the seizure of the rice shipment/vessel in question, which shall be then proceeded against in accordance with applicable law, rules and regulations.

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Based on the foregoing, all shipments of rice imported in to the country shall be covered by an Import Authority issued by the NFA. Clearly, both MOA and CMO No. 20-2001 made no distinction as to which rice importation an Import Authority is required. Hence, in the absence of any law authorizing other entities to engage in the importation of rice, the Court cannot deviate from the clear provision of the TCCP, the above-mentioned related laws and implementing rules and regulations.

Meanwhile, petitioners admitted that they shipped rice into the country without the requisite Import Authority from the NFA relying heavily on the DOJ Opinion No. 95, series of 1994 which reads:

> This refers to your request for opinion on whether or not the bringing into the country by Export Processing Zone Authority (EPZA)-registered firms within the zone area of rice-irrespective of variety, including fancy rice, used as raw material for processing and/or repacking and, thereafter, to be re-exported to other countries, would constitute "importation of rice which, you claim," is violative of the intent and spirit of Presidential Decree No. 4, as amended by Executive Order No. 1028" as well as Section 23, paragraph 10, Chapter 8 of Republic Act No. 7607. *gc*

> You state that the query is raised "in view of the request of some EPZA-registered firms to import fancy variety rice for processing and repacking and thereafter bring the same back to other foreign countries or country of origin."
>
> The query is answered in the negative.
>
> In law and general usage, **"importation" has been defined as the act of bringing goods and merchandise into a country from a foreign country with intent to land or unlade the goods there** (see Lachauco & Co. vs. Apostol and Corpus, 44 Phil. 138, 157; Words and Phrases, Vol. 20, pp. 427-429, citing cases; Cunard Steamship Co. vs Mellon, 67 L Ed. 894). **An import means a product manufactured in a foreign country and then shipped to and sold in this country** (Black's Law Dictionary 6th ed., p.755). **An importer in turn is defined as one who purchases items and resells them to the public** (Sibal, Philippine Legal Encyclopedia p.140)
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> Indubitably, **the intention to finally unload and sell the goods/merchandise brought into the country determines whether the act is importation or not. Conversely, when the intent is to re-export the same, it cannot be deemed importation** (see also, Words and Phrases, supra, p. 427, citing cases).
>
> For the same reason, the intent of EPZA-registered firms in the zone area to bring into the country fancy variety rice for processing and/or repacking and, thereafter, to be "re-exported" to other countries cannot be deemed importation and violative of the provision of Section 2 of E.O. No. 1028 which, among other things, provides that "the National Food Authority shall continue to have the exclusive authority to import rice when necessary and when authorized by the President" nor of the mandate of Section 23, Chapter 8 of the Magna Carta for Small Farmers (R.A. No. 7607) which, prohibits, among others, the importation of agricultural products that are produced locally in sufficient quantity as the important determining factor, i.e., the rice brought in will ultimately be unladed and sold in the country, is missing.

The Court is not persuaded by petitioners' argument that its rice shipments cannot be considered importations because these were not intended for domestic consumption rather these were intended to be processed and subsequently exported. Jc

First, the Supreme Court was categorical in defining importation as consisting of bringing an article into the country from the outside. [29] Furthermore, Section 1202 of the TCCP provides that importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload therein. It is clear from the provision of the law that mere intent to unload is sufficient to commence an importation. [30] And it is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit for withdrawal has been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs.[31] Based on the foregoing definitions, the mere intent to unload suffices so as to consider the act "importation." There is no requirement that the articles unloaded in the Philippines must be commercially sold or distributed locally before the act can be treated as "importation."

In the present case, the rice shipments were unloaded in the country and were in fact admitted by petitioners that the same were in the customs bonded warehouses at the time of their seizure. [32] Hence, the rice shipments are considered importations under the TCCP.

Second, petitioners cannot rely on DOJ Opinion No. 95 as opinion such as this is merely persuasive and not necessarily controlling. [33] In the case of *Philippine National Construction Corporation vs. Pabion*, [34] the Supreme Court

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[29] *Maribel B. Jardeleza vs. People of the Philippines*, G.R. No. 165265, February 6, 2006, 481 SCRA 638.
[30] *Feeder International Line, Pte., Ltd. vs. Court of Appeals*, G.R. No. 94262, May 31, 1991, 197 SCRA 842.
[31] *Tomas Salvador vs. People of the Philippines*, G.R. No. 146706, July 15, 2005, 463 SCRA 489.
[32] Petition for Review, Rollo, p. 12.
[33] *Associated Communications and Wireless Services – United Broadcasting Networks vs. National Telecommunications Commission*, G.R. No. 144109, February 17, 2003, 397 SCRA 574.
[34] G.R. No. 131715, December 8, 1999, 320 SCRA 188.

ruled that official opinions of the Justice Secretary are merely persuasive. When an administrative agency renders an opinion or issues a statement of policy, it merely interprets a pre-existing law and the administrative interpretation is at best advisory for it is the courts that finally determine what the law means. Thus an action by an administrative agency may be set aside by the judicial department if there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law. [35] This opinion cannot prevail over the express language of the law.

Third, DOJ Opinion No. 95 was issued in 1994 while both MOA and CMO No. 20-2001 were issued in 2001 just a year before the arrival of the subject rice importations. Thus, there is no reason for relying on the DOJ Opinion when the government agency tasked to implement E.O. No 1098 already issued the MOA with the related CMO issued by the BOC requiring Import Authority for all rice importations. To sustain a different theory would render nugatory the aim and purpose of the law when it authorizes a particular government agency, that is, NFA to regulate the entry of rice shipments into the country.

Fourth, even if We are to consider DOJ Opinion No. 95, the same will not apply to petitioners. The said opinion specifically pertained to EPZA-registered firms and not to corporations engage in the operation of Customs Bonded Warehouses.

[35] *Baltazar vs. Comelec*, G.R. No. 140158, January 29, 2001, 350 SCRA 518.

Petitioners contended that Customs Bonded Warehouses are similar to PEZA-registered entities as regards the use of raw materials for export products. The exemption of PEZA-registered firms is based on the fact that the rice shipments received by these entities are neither sold nor distributed to the domestic market but instead processed for eventual re-exportation. According to petitioner, the same principle holds true for Customs Bonded Warehouses like petitioners.

The Court is not persuaded.

Petitioners and PEZA-registered firms are not similarly situated. PEZA-registered firm is the same entity that will process and export the end product using the raw materials it previously imported into the country. In contrast, petitioners are not the direct exporters of rice or its possible end product. A Customs Bonded Trading Warehouse has been defined in Customs Administrative Order No. 2-91 as:

> Section 25. A Bonded Trading Warehouse (BTW) is a warehouse operated by a Registered Export Trading Company (RETC) duly registered with the BOI and licensed by the Bureau of Customs to receive imported cargoes, except fabrics and accessories in the manufacture of garments, for storage and subsequent sale to an export producer operating a Customs Bonded Manufacturing Warehouse, or for transfer to a duly accredited export producer.

Based on the foregoing, a Customs Bonded Trading Warehouse is authorized to receive imported cargoes for storage and subsequent sale to an export producer operating a Customs Bonded Manufacturing Warehouse or transfer to a duly accredited export producer. Jr

In its Memorandum,[36] petitioners admitted that subject articles were clearly intended for storage and subsequent sale to an export producer operating Customs Bonded Manufacturing Warehouse or transfer to a duly accredited export producer, and thereafter exported abroad. Evidently, petitioners are not the direct exporters of the rice shipments but will have to sell it to export producers. Moreover, petitioner merely alleged that the said rice shipments were to be used as raw materials in the production of export products, however, no documentary evidence was presented to support their allegation.

<u>Second Issue: Duties and tax exemptions given to PEZA-registered firms on their rice importations are NOT applicable to petitioners.</u>

The duties and tax exemptions given to PEZA-registered firms on their importations are provided for in special laws specifically designed for PEZA-registered firms, either in Presidential Decree No. 66 [37] or Executive Order No. 226. [38] These special laws expressly grant preferential tax treatment to business establishments registered and operating within an ecozone, which by law is considered as a *separate customs territory*. [39]

On the contrary, Petitioners Dynamic Logistics International Corporation and Export Supply Center, Inc. are corporations engage in the operation of Customs Bonded Warehouses although there is nothing in the record of the case that will show Export Supply possessed a renewed license

[36] Par. 7.03.2, Petitioners' Memorandum, *Rollo*, p. 1037.
[37] Creating The Export Processing Zone Authority and Revising Republic Act No.5490.
[38] The Omnibus Investments Code of 1987.
[39] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866. February 11, 2005, 451 SCRA 132.

duly approved by the BOC at the time of the importation of the subject rice shipments. These Customs Bonded Warehouses are governed by and subject to the provisions of the TCCP which provides specific provisions on exemptions from duties of bonded manufacturing and smelting warehouses upon meeting certain conditions.

Hence, petitioners cannot seek relief by invoking special laws designed only for PEZA-registered entities because it is the TCCP that applies to them.

Third Issue: The forfeiture by the Commissioner Of Customs of the subject rice shipments is proper.

Petitioners argued that the Commissioner of Customs erred in ordering the forfeiture of the subject rice shipments in favor of the government considering that the shipment was not attended by fraud. Petitioners shipped the subject articles in the honest belief that based on official pronouncements and rulings, a permit or Authority to Import is no longer necessary. They refer to the pronouncements dated 06 July 2000 letter [40]of former NFA Assistant Administrator, Jessup P. Navarro to then Deputy Commissioner Julieta S. Manahan of the Bureau of Customs and 06 July 2000 letter [41] of the NFA's Director for Marketing Operations, Conrado Ibañez to Manu-Trading International Corporation stating that the importation of rice by entities operating bonded warehouses do not require any prior permit or clearance from the NFA.

[40] Exhibit "D", *Rollo*, p. 575.
[41] Exhibit "E", Rollo, p.576.

The Court cannot give credence on petitioners' reliance on the said pronouncements.

First, both letters relied on the DOJ Opinion which We already regarded as merely persuasive and not controlling considering that the same cannot prevail over the clear mandate of the law.

Second, both letters were issued on July 6, 2000 while MOA and CMO No. 20-2001 were issued in 2001. Evidently, the stand of NFA and BOC at the time of the arrival of rice shipment in 2002 was that Import Authority is necessary for all rice importations.

Third, The Government is not estopped by acts or errors of its agents, particularly on matters involving taxes. Corollarily, the erroneous application of tax laws by public officers does not preclude the subsequent correct application thereof. Withal, the errors of certain administrative officers, if that be the case, should never be allowed to jeopardize the government's financial position. [42] Fundamental is the rule that the state cannot be put in estoppel by the mistakes or errors of its officials or agents. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same. [43]

With these, We affirm the position of the respondent Commissioner of Customs that petitioners' rice shipments are importations regulated by the NFA requiring as a pre-requisite an Import Authority. The rice shipments fall

[42] *Commissioner of Internal Revenue vs. Philippine Long Distance Co.,* G.R. No. 140230, December 15, 2005, 478 SCRA 61.
[43] *Philippine Bank of Communication vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241.

within the class of articles the importation of which is effected contrary to law, hence, the Commissioner of Customs may seize and order its forfeiture under Section 2530 (f) of the TCCP. It is of no consequence whatsoever whether the importation was made in good faith by relying on administrative opinions and disclaiming knowledge of the existing legal constraint.

Respondent's Counterclaim

In its Answer, [44] respondent alleged that due to petitioners' unfounded action, the former was constrained to refer this case to the Office of the Solicitor General (OSG) for legal representation, on account of which, respondent has incurred and will incur litigation expenses in the amount of not less than Three Hundred Thousand Pesos (P300,000.00).

Upon examination of the records of the case, no evidence was presented to support this allegation. Moreover, it has been established in jurisprudence that a winning party may be entitled to expenses of litigation only where he, by reason of plaintiff's clearly unjustifiable claims or defendant's unreasonable refusal to his demands, was compelled to incur said expenditures. [45] In the present case, petitioners were merely exercising a legal remedy available to them as provided in Section 2402 of the TCCP.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The counterclaim of Commissioner of Customs is dismissed for lack of legal and factual basis.

[44] *Rollo,* pp. 273-278.
[45] *National Power Corporation vs. Philipp Brothers Oceanic, Inc.*, G.R. No. 126204, November 20, 2001, 369 SCRA 629.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

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