REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

REPUBLIC OF THE PHILIPPINES, *Petitioner,*	**CTA EB NO. 2210** *(CTA Case No. 8557)*
	Present:
- versus -	**DEL ROSARIO, *PJ,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.***
AMIRA C FOODS INTERNATIONAL DMCC, *Respondent.*	**Promulgated:**
	JUN 0 3 2021 3:05 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Republic of the Philippines (Republic) against respondent Amira C Foods International DMCC (Amira Foods) seeking to set aside the assailed Decision of this Court's First Division, dated July 18, 2019,[2] which granted Amira Foods' Petition for Review, reversed the September 11, 2012 Decision in Customs Case No. 2012-013, and ordered the release and delivery of ₱487,200,000.00 to Amira Foods representing the bid price of its Indian White Rice which was received by the Commissioner of Customs (COC) and placed under Special Account No. 1571-0589-83, Land Bank of the Philippines, Freeport Zone (SBFZ) Branch.

The CIR likewise seeks to set aside the First Division's Amended Decision dated November 22, 2019[3] which amended the original Decision to include an

[1] *Rollo*, pp. 71-99, with Annexes on pp. 100-163.
[2] *Id.*, pp. 102-142.
[3] *Id.*, pp. 144-150.

award to Amira Foods of all the interest earned on the amount from the time of deposit until its satisfaction of judgment.

The Parties

Petitioner Republic is a sovereign entity representing the Bureau of Customs (BOC), a government agency tasked with the enforcement of tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration.

Respondent Amira Foods is a foreign company registered in the Dubai Freeport Zone Register under Registration No. DMCC2178, with address at Unit No. 30-01-48, Floor No. 1 Building No. 3, Plot No. 550-554, J&G, DMCC, Dubai. Petitioner is not doing business in the Philippines, and only brought suit on an isolated incident involving its property. It is represented by its duly authorized representative, Mr. Saumit Ghosh, whose authority is shown in the Director's Certificate[4] dated October 10, 2012.[5]

The Facts[6]

On November 16, 2011, Amira Foods (India) Limited *(AF India)*, a corporation organized and existing under Indian Laws, executed a Sales and Purchase Contract[7] with Perum Bulog, an Indonesian state-owned enterprise organized and existing under Indonesian laws, for 100,000 metric tons of Indian White Rice to be delivered to various ports of discharge in Indonesia.

AF India then chartered six (6) vessels to deliver the Indian White Rice. One of these vessels was the MV Vinalines Mighty which was bound for the port of Tanjung Prick, Jakarta, Indonesia.[8]

MV Vinalines Mighty arrived at the Port of Kandla, India, on January 31, 2012, to load 21,000 metric tons of Indian White Rice[9] which was completed on February 24, 2012.[10] The next day, MV Vinalines Mighty left the Port of Kandla, India bound for Tanjung Priok, Jakarta, Indonesia.[11]

---

[4] CTA Case No. 8557 Docket Vol. I, p. 114.
[5] *Id.*, pp. 9-10.
[6] As found by the Special First Division and as culled from the records of the case.
[7] Docket Vol. III, pp. 1372-1406; Exhibits "P-2", "P-2-a" and "P-2-a".
[8] *Id.*, pp. 1407-1413, Exhibit "P-3".
[9] *Id.*, pp. 1414-1420, Exhibit "P-4".
[10] *Id.*, pp.1414-1420, Exhibit "P-4"; p. 1149, Par. 1, II (A) Facts, Amended Pre-Trial Order.
[11] *Id.*, pp. 1414-1424, Exhibits "P-4" and "P-5".

When the MV Vinalines Mighty arrived off the waters of Jakarta, Indonesia[12], however, it was unable to discharge the rice cargo[13] as Perum Bulog rejected its tender of readiness to discharge on account of the "limitations given from Indonesian Government"[14] since the vessel arrived beyond the period allotted for it to deliver the cargo. MV Vinalines Mighty was then forced to stay "at anchorage" in Indonesian Waters from March 8 to 27, 2012[15] and "did not discharge any cargo".[16] During this time, AF India incurred demurrage expenses at the rate of US$5,000.00 per day.[17] The other vessels chartered to deliver Indian White Rice to various ports in Indonesia, on the other hand, were able to make timely deliveries of their shipments.

On March 20, 2012, AF India entered into a "high sea sale" of the Indian White Rice with Amira Foods, its wholly-owned subsidiary.[18]

Due to Perum Bulog's rejection as well as the continued accumulation of demurrage fees, Amira Foods explored several business options "to temporarily unload xxx at a freeport," as a transshipment port. The use of a temporary storage facility provided by a free port was considered by Amira Foods before it could transship the goods to a final destination to minimize its losses. The freeports in the Philippines and Singapore were considered. Since Singapore appeared to be more expensive, Subic Bay Port was chosen as the transshipment port.[19]

Amira Foods initially sought the assistance of Container Bridge, a Manila-based logistics support company and clearing agent,[20] to assist in the transshipment and temporary storage of the rice cargo within the Subic Bay Freeport Zone (SBFZ).[21]

On April 4, 2012, MV Vinalines Mighty, carrying the subject Indian White Rice, reached Grande Island in the SBFZ.[22] On the same day, Boarding Inspection and Formalities were conducted, after which, a General Permit was issued by the Board Officer to discharge the subject rice in the Subic Special Economic Zone (SSEZ).[23] The discharging of the subject rice commenced on April 5, 2012, and was completed on April 20, 2012.[24]

[12] *Id.*, p. 1511, Exhibit "P-24"; pp. 1520-1522, Exhibit "P-26".
[13] *Id.*, pp. 1520-1522, Exhibit "P-26".
[14] *Id.*, pp. 1512-1515, Exhibit "P-25".
[15] *Id.*, pp. 1520-1522, Exhibit "P-26".
[16] *Id.*, pp. 1520-1522, Exhibit "P-26".
[17] *Id.*, pp. 1407-1413, Exhibit "P-3"; docket Vol. II, pp. 961-962, Exhibits "P-86-40" and "P-86-41".
[18] *Id.*, p.1619, Exhibit "P-76-15"; docket Vol. II, pp. 977-978, Exhibit "P-86-57".
[19] Docket Vol. II, pp. 961-968, Exhibits "P-86-40" to "P-86-47".
[20] *Id.*, p. 966, Exhibit "P-86-45".
[21] *Id.*, p. 967, Exhibit "P-86-46".
[22] *Id.* at Note 7, p. 1149, Amended Pre-Trial Order, II (A) Facts, par. 2.
[23] *Id.*, par. 3.
[24] *Id.*, par. 4.

Upon unloading, the subject rice was stored inside two (2) Subic Bay Metropolitan Authority (SBMA) - managed warehouses within the SSEZ.[25]

On April 16, 2012, Major Elpidio Jose R. Manuel, District Commander, Customs Police Division - Enforcement and Security Service (CPD-ESS), BOC, requested Atty. Redentor S. Tuazon, OIC, Senior Deputy Administrator for Operations, SBFZ, for copy of pertinent documents anent the subject rice.[26] On even date, Atty. Tuazon replied and stated that *"no admission entry has yet been filed by the consignee (Metro Eastern Trading Corporation) of the said shipment since upon their representation the issuance of their allocation permit from the National Food Authority (NFA) is still in progress."*[27]

Major Manuel likewise inquired with the Administrator of NFA whether the shipment was covered by any authority issued by the NFA.[28] On April 18, 2012, Angelita T. Banayo, Administrator, NFA, replied that *"[a]fter verifying through with our records, Metro Eastern has not participated in any of NFA's open rice importation under the Private Sector-Financed Importation and Farmer's Organizations rice importation for 2012. Henceforth, we are disavowing any knowledge on the said rice importation."*[29]

On May 15, 2012, the District Collector of the Port of Subic issued a Warrant of Seizure and Detention (WSD) against the 420,000 bags of Indian White Rice for possible violations of Section 2530 (e), (f) and (l) of the Tariff and Customs Code of the Philippines, as amended (TCCP).[30]

On May 18, 2012, in a Return of Service of WSD, Major Manuel informed the District Collector of Subic that the WSD has been duly served and received by Mr. Cesar P. Bulaon, Manager, Metro Eastern.[31]

On June 15, 2012,[32] Amira Foods received the undated Decision of the District Collector of Subic ordering the forfeiture of the subject shipment.[33] Amira Foods appealed to the COC,[34] however, its appeal was dismissed, and the Decision of the District Collector of Subic was affirmed.[35]

[25] *Id.*, par. 5.
[26] *Id.*, par. 6.
[27] *Id.*, par. 7.
[28] *Id.*, par. 8.
[29] *Id.*, p. 1150, par. 9.
[30] *Id.*, par. 10.
[31] *Id.*, par. 11.
[32] Docket Vol. IV, p. 2107, Memorandum dated July 30, 2018, par. 29.
[33] *Id.* at Note 7, p. 1150, Amended Pre-Trial Order, II (A) Facts, par. 12.
[34] *Id.* at Note 4, p. 96, Annex "A" of the Petition for Review.
[35] *Id.*, p. 113.

Aggrieved, Amira Foods timely filed a Petition for Review with the Court of Tax Appeals (CTA) on October 16, 2012.

On October 17, 2012, the Republic proceeded with the sale of the forfeited shipment by public auction.[36] The full amount of ₱487,200,000.00[37] representing the bid price for the forfeited shipment was received by the Republic[38] and placed under Special Account No. 1571-0589-83, Land Bank of the Philippines, Freeport Zone (SBFZ) Branch.[39]

From the time of their unloading up to the time of the auction sale, Amira Foods did not remove a single sack of rice from the SSEZ warehouses.[40]

On October 22, 2012,[41] the parties were heard on Amira Foods' Urgent *Ex Parte* Application for the Issuance of Temporary Restraining Order and/or Preliminary Injunction. During the hearing, Amira Foods manifested that the auction sale sought to be enjoined or restrained had already been conducted and moved to be allowed to file an amended Petition for Review which was granted by the Court in Division.

On October 25, 2012, Amira Foods filed a Manifestation with Request for Admission[42] seeking confirmation of matters relating to the auction sale conducted by the Republic.

To expedite the proceedings, on November 22, 2012, Amira Foods filed a Manifestation and Motion (To Withdraw Prayer for Temporary Restraining Order and/or Preliminary Injunction) in view of the auction sale.[43]

In the Resolution dated November 29, 2012,[44] the Court in Division granted Amira Foods' motion to withdraw its prayer for issuance of a temporary restraining order and/or preliminary injunction.

On January 7, 2013, within the extended period,[45] the Republic filed its Answer.[46] On January 18, 2013, Amira Foods filed a Motion to Admit Attached

[36] *Id.* at Note 29, par. 14.
[37] *Id.* at Note 4, p. 504, Answer to Request for Admission, par. 1.
[38] *Id.* at Note 29, par. 17.
[39] *Id.* at Note 7, p. 1151, Amended Pre-Trial Order, II (A) Facts, par. 18.
[40] *Id.* at Note 29, par. 16.
[41] *Id.* at Note 4, pp. 360-361, Minutes of the Hearing on October 22, 2012.
[42] *Id.*, pp. 361-366.
[43] *Id.*, pp. 409-414.
[44] *Id.*, p. 421.
[45] *Id.*, p. 410, Order dated December 18, 2012.
[46] *Id.*, pp. 447-481.

Reply,[47] which the Court granted in the Resolution dated February 6, 2013.[48]

On January 28, 2013, within the extended period,[49] the Republic filed its Answer to Request for Admission.[50]

After the parties filed their respective Pre-Trial Briefs[51] and Joint Stipulation of Facts[52] which the Court approved, Pre-Trial was terminated. However, on motion of Amira Foods[53], Pre-Trial was reopened[54] and the parties filed their Amended Joint Stipulation of Facts and Issues.[55] After the Court in Division approved the same, Pre-Trial was terminated[56] and the Pre-Trial Order[57] was issued. An Amended Pre-Trial Order[58] was later issued, as prayed for by Amira Foods[59] and without objection by the Republic.[60]

During trial, Amira Foods presented the following witnesses: (1) Mr. Saumit Ghosh;[61] (2) Mr. Vicente P. Cuevas;[62] (3) Mr. Homayun Kabir Caudary[63] - all of whom testified by way of judicial affidavits; and (4) Mr. Protik Guha, who testified by way of deposition.[64] Amira Foods' witnesses were all cross-examined by the Republic's counsel.[65] Mr. Kabir further underwent re-direct and re-cross examination by the Republic's counsel.[66]

On April 25, 2016, within the extended period, Amira Foods filed its

[47] *Id.*, pp. 512-527.
[48] *Id.*, p. 529.
[49] *Id.*, p. 495, Order dated January 14, 2013.
[50] *Id.*, pp. 504-511.
[51] *Id.* at Note 19, pp. 531-551, 567-573.
[52] *Id.*, pp. 827-833.
[53] *Id.*, pp. 890-891.
[54] *Id.*, pp. 917-919.
[55] *Id.*, pp. 1039-1049.
[56] *Id.*, p. 1051.
[57] *Id.*, pp. 1057-1070.
[58] *Id.* at Note 7, pp. 1148-1164.
[59] *Id.* at Note 19, pp. 1080-1086, Comment and Manifestation.
[60] *Id.*, p. 1117, Comment; pp, 1135-1136, Resolution dated October 24, 2014.
[61] *Id.* at Note 7, pp.1604-1624, Exhibits "P-76" to "P-76-20"; *id.* at Note 19, pp.1052-1053, Minutes of the July 22, 2014 Hearing; p. 1055, Resolution dated July 22, 2014.
[62] *Id.* at Note 19, pp. 1093-1104, Exhibits "P-77" to "P-77-11"; pp. 1112-1113, Minutes of the September 30, 2014 Hearing; pp. 1115-1116, Resolution dated September 30, 2014.
[63] *Id.* at Note 7, pp. 1183-1195, Exhibit "P-84" to "P-84-I-1"; pp.1250-1254, Minutes of the Hearing on September 22, 2015; p. 1257, Resolution dated September 22, 2015.
[64] *Id.* at Note 19, pp. 921-1001, Exhibit "P-85 to "P-86-80-a".
[65] *Id.* at Note 7, pp.1604-1624, Exhibits "P-76" to "P-76-20"; pp. 1183-1195, Exhibit "P-84" to "P-84-I-1"; pp. 1250-1254, Minutes of the Hearing on September 22, 2015; p. 1257, Resolution dated September 22, 2015; *id.* at Note 19, pp.1052-1053, Minutes of the July 22, 2014 Hearing; p. 1055, Resolution dated July 22, 2014; pp. 1093-1104, Exhibits "P-77" to "P-77-11"; pp. 1112-1113, Minutes of the September 30, 2014 Hearing; pp. 1115-1116, Resolution dated September 30, 2014; pp. 921-1001, Exhibit "P-85 to "P-86-80-a".
[66] *Id.* at Note 7, pp. 1183-1195, Exhibit "P-84" to ""P-84-I-1"; pp.1250-1254, Minutes of the Hearing on September 22, 2015; p. 1257, Resolution dated September 22, 2015.

Formal Offer of Evidence.[67] Its Exhibits were admitted in the Resolution dated September 21, 2016[68] except Exhibits "P-39", "P-46", "P-47" and "P-48" which were denied for lack of proper identification and for failure to present their originals for comparison, after considering the Republic's objections thereto.[69] Amira Foods moved to reconsider the denied exhibits,[70] but this was denied by the Court in Division,[71] after considering the Republic's objections thereto.[72]

On the other hand, the Republic presented its sole witness, Mr. Errol B. Albano, District Collector of the Port of Subic, who testified on direct examination by way of Judicial Affidavit.[73] He was cross-examined by Amira Foods' counsel and further underwent re-direct and re-cross examination.[74]

On June 7, 2017, the Republic posted its Formal Offer of Evidence.[75] Its Exhibits were admitted in the Resolutions dated August 7, 2017[76] and May 25, 2018[77] despite Amira Foods' objections thereto.[78]

The parties were given a period of thirty (30) days from receipt of the Resolution dated May 25, 2018[79] to file their respective memoranda. On June 29, 2018, the Republic timely posted its Memorandum.[80] On July 30, 2018, within the extended period,[81] Amira Foods filed its Memorandum.[82] Thus, in the Resolution dated August 7, 2018, the case was submitted for decision.[83]

On July 18, 2019, the Court in Division issued the assailed Decision[84], the dispositive portion of which reads as follows:

---

[67] *Id.*, pp. 1352-1370.
[68] *Id.* at Note 32, pp. 1705-1709.
[69] *Id.*, pp. 1649-1659, Comment (To the Formal Offer of Evidence of petitioner Amira C Foods International DMCC).
[70] *Id.*, pp. 1710-1715.
[71] *Id.*, pp. 1739-1745.
[72] *Id.*, pp. 1725-1733, Comment (on the Motion for Partial Reconsideration dated October 11, 2016).
[73] *Id.*, pp. 1785-1786, Minutes of the Hearing on May 23, 2017; pp. 1787-1788, Order dated May 23, 2017; *id.* at Note 19, pp. 577-590, Exhibit "R-11".
[74] *Id.* at Note 32, pp.1785-1786, Minutes of the Hearing on May 23, 2017; pp.1787-1788, Order dated May 23, 2017.
[75] *Id.*, pp. 1798-1808.
[76] *Id.*, pp. 1907-1908.
[77] *Id.*, pp. 2042-2045.
[78] *Id.*, pp. 1895-1901, Comment/Objections to the Formal Offer of Evidence; pp. 1956-1967, Comment (on the Motion for Reconsideration).
[79] *Id.*, p. 2045.
[80] *Id.*, pp. 2052-2079.
[81] *Id.*, p. 2260.
[82] *Id.*, pp. 2176-2257.
[83] *Id.*, p. 2260.
[84] *Id.* at Note 2.

> "**WHEREFORE**, in view of the foregoing considerations, petitioner Amira C Foods International DMCC's Petition for Review is hereby **GRANTED.** The assailed September 11, 2012 Decision in Customs Case No. 2012-013 is **REVERSED** and **SET ASIDE**. Accordingly, **UPON FINALITY OF JUDGMENT**, the respondent Republic of the Philippines is **ORDERED to RELEASE AND DELIVER** to petitioner Amira C Foods International DMCC the amount of **FOUR HUNDRED EIGHTY- SEVEN MILLION TWO HUNDRED THOUSAND PESOS (₱487,200,000.00)** representing the bid price of its Indian White Rice which was received by the Commissioner of Customs and placed under Special Account No. 1571-0589-83, Land Bank of the Philippines, Freeport Zone (SBFZ) Branch.
>
> **SO ORDERED."**

On August 8, 2019, the Republic filed its Motion for Reconsideration (on the July 18, 2019 Decision). Amira Foods responded by filing its Comment on the Motion for Reconsideration (on the July 18, 2019 Decision) filed on September 25, 2019.

On August 8, 2019, Amira Foods posted a Motion (to Include the Award of Interest in the Decision dated 18 July 2019) to which the Republic filed its Manifestation (In lieu of Comment) on September 13,2019.

On November 22, 2019, the Court in Division issued the assailed Amended Decision[85] which denied the Republic's motion for reconsideration for lack of merit but granted Amira Foods' motion to include an award of interest in the Decision. The dispositive portion of the Amended Decision reads as follows:

> "**WHEREFORE,** considering the foregoing disquisitions, respondent's **Motion for Reconsideration (on the July 18, 2019 Decision)** is hereby **DENIED** for lack of merit while petitioner's **Motion (to Include the Award of Interest in the Decision dated 18 July 2019)** is hereby **GRANTED.** Accordingly, the assailed Decision dated July 18, 2019 is **MODIFIED** to read, as follows:
>
> > **WHEREFORE,** in view of the foregoing considerations, petitioner Amira C Foods

[85] *Id.* at Note 3.

> International DMCC's Petition for Review is hereby GRANTED. The assailed September 11, 2012 Decision in Customs Case No. 2012-013 is **REVERSED** and **SET ASIDE.** Accordingly, **UPON FINALITY OF JUDGMENT,** the respondent Republic of the Philippines is ORDERED to RELEASE and DELIVER to petitioner Amira C Foods International DMCC the amount of **FOUR HUNDRED EIGHTY-SEVEN MILLION TWO HUNDRED THOSAND** *(sic)* **PESOS (₱487,200,000.00)** representing the bid price of its Indian White Rice which was received by the Commissioner of Customs and placed under Special Account No. 1571-0589-83, Land Bank of the Philippines, Freeport Zone (SBFZ) Branch, **including all interest earned on the amount from the time of deposit until its satisfaction of iudgment.**
>
> **SO ORDERED.**
>
> **SO ORDERED."**

Within an extended period of time[86] granted by the Court *en banc*,[87] the Republic timely posted its Petition for Review[88] on January 2, 2020 which the CTA *en banc* received on January 8, 2020.

On January 23, 2020, Amira Foods was ordered to file its Comment thereto.[89]

Amira Foods filed a Motion for Extension of Time to File Comment on February 12, 2020[90] which was granted by the Court via Minute Resolution on February 14, 2020.[91]

On February 19, 2020, Amira Foods filed a Motion for Leave to Admit Attached Comment[92] with attached Comment.[93]

---

[86] *Id.* at Note 1, pp. 1-62.
[87] *Id.*, p. 70.
[88] *Id.* at Note 1.
[89] *Id.*, pp. 165-166.
[90] *Id.*, pp. 167-170.
[91] *Id.*, p. 172.
[92] *Id.*, pp. 173-176.
[93] *Id.*, pp. 177-219 with Annexes "1" to "43" at pp. 220-1362.

In a Resolution dated June 5, 2020[94], the Court granted Amira Foods' Motion for Extension of Time to File Comment and Motion for Leave to Admit Attached Comment and admitted its Comment. In that same Resolution, the case was likewise submitted for decision.

The Assignments of Errors

The Republic claims that the First Division of this Court erred in ruling the following: 1) that mere intent to import rice *per se* is not a taxable transaction that is subject to tax and customs laws; 2) that taxes and duties may not be imposed on the 420,000 bags of Indian White Rice while they are inside the SBMA-managed warehouses; and 3) that Amira Foods did not bring the said rice into the Philippine customs territory at the time of seizure and forfeiture, thus, making it outside the reach of Customs Memorandum Order (CMO) No. 20-2001 which requires it to secure an import permit from the NFA prior to importing rice into Philippine customs territory.

The Arguments of the Parties

The Republic argues that the evidence shows that Amira Foods intended to unlade its goods in Philippine customs territory, hence, it intended an importation and not a transshipment. For failure of Amira Foods to pay the appropriate customs and duties for said importation, the goods were validly seized and forfeited in favor of the government.

The Republic argues that mere intent to unload is sufficient to commence importation, and therefore, a taxable event, citing *Feeder International Line Pte. Ltd., by its agent, Feeder International (Phils.), Inc. vs. Court of Appeals, et al.*[95] This intent was confirmed during the deposition of Amira Foods' witness, Mr. Protik Guha, Chief Executive Officer of Amira Pure Foods Private Ltd., who testified that Amira Foods took into consideration the possibility of importing the Indian White Rice to the Philippines and, in the event thereof, the payment of corresponding taxes and duties thereon.

The Republic also claims that Amira Foods' insistence that the goods were sent to the Philippines only for temporary warehousing pending determination of its final destination is belied by its shipping documents[96] and its failure to file an admission entry or Transit and Admission Permit (T/AP). These clearly

[94] *Id.*, pp. 1369-1371.
[95] G.R. No.194262, May 31, 1991.
[96] Bill of Lading, Packing List and Commercial Invoice, Fumigation Certificate, Inward Foreign Manifest, SGS Inspection Certificate of Quality and Certificate of Origin, as determined by the District Collector of the Port of Subic.

indicate that the Port of Subic is the port of final destination/port of discharge and negate any intent to export thereafter.

On the other hand, Amira Foods asserts that the failure of the Republic to attach certified true copies of material portions of the record makes the Petition dismissible in accordance with Sections 6 and 7 of Rule 43 of the Rules of Court.

Further, the Court in Division correctly nullified the WSD issued against the subject rice cargo because the shipment was never imported into Philippines customs territory since it was stored in SBMA-managed warehouses located in the SSEZ, a separate and foreign customs territory, at the time of its seizure.

The Republic's reliance on the *Feeder International* case is misplaced. When the Supreme Court declared in *Feeder International* that "mere intent to unload is sufficient to commence importation", this was in the light of the finding that the vessel in *Feeder International* entered Philippine customs territory when it anchored at a regular port in Guiuanon Island, Guimaras, Iloilo without notifying the authorities at the port or Customs of its arrival.

Moreover, intent to import, *per se,* is not taxable. The Republic's act of citing Mr. Guha's testimony about the possibility of importing rice into the Philippines and concluding that it is confirmatory of intent to unlade goods in Philippine territory for domestic consumption is speculative and without factual basis. Neither was indicating the "Port of Subic" as the port of final destination evidence of importation as it was necessary to indicate "Port of Subic" as the port of destination in order for the MV Vinalines Mighty to be allowed to enter the SSEZ and for its cargo to be discharged within the SBFZ.

Lastly, the Republic's reliance on the TCCP's provisions on immediate exportation are misplaced. The Republic itself prevented the freeport locator or enterprise from filing an admission entry or T/AP when it seized the goods prior to the deadline for it to file the same.

The Ruling of the Court

The Court *en banc* shall dispense with the procedural issues raised by Amira Foods first.

Section 3, Rule 1 of Revised Rules of the CTA[97] (RRCTA) provides that the Rules of Court shall apply suppletorily to the RRCTA. Section 4(b), Rule 8 of the RRCTA on "Procedure in Civil Cases" states that "[a]n appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court."

Section 6(c) of Rule 43 of the Rules of Court[98], in turn, states that the Petition should "be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, **together with certified true copies of such material portions of the record referred to therein and other supporting papers"**. Section 7 of the same rule[99] states that failure to comply with the foregoing requirement shall render the Petition dismissible.

Amira Foods alleges that the Republic failed to attach certified true copies of material portions of the record which renders the Petition dismissible. However, a perusal of the Republic's Petition shows that it did attach material portions of the record as Annexes "A" to" J" of its Petition[100], inclusive of the assailed Decision and Resolution. While the Court *en banc* notes that this is less comprehensive than the material portions of the record submitted by Amira Foods[101], *We* consider this to be substantial compliance with Section 6(c) of Rule 43 of the Rules of Court. Moreover, the determination of what portions of the record are "material" is relative to the assessment of the petitioner submitting the documents.

The Court reiterates that there is ample jurisprudence holding that the subsequent and substantial compliance of a party may call for the relaxation of the rules of procedure.[102] Significantly, rules of procedure ought not to be applied

---

[97] A.M. No. 05-11-07-CTA. RULE 1, SEC. 3. *Applicability of the Rules of Court.* - The Rules of Court in the Philippines shall apply suppletorily to these Rules.

[98] Rules of Court, Rule 43, **Section 6.** *Contents of the petition.* — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[99] Rules of Court, Rule 43, Section 7. *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[100] The Republic attached Exhibits "R-1" to "R-8" to its Petition for Review before this Court.

[101] Amira Foods attached Annexes "1" to "43" to its Comment to the Republic's Petition for Review.

[102] *Security Bank Corporation (formerly Security Bank and Trust Company) v. Indiana Aerospace University, et al.*, G.R. No. 146197, June 27, 2005 citing *Jaro v. Court of Appeals*, 427 Phil. 532 (2002).

in a very rigid, technical sense, but must be used to help secure, and not override substantial justice. After all, the court's primary duty is to render or dispense justice.[103]

Despite the Republic's hurdling the procedural issues, *We* note that the arguments advanced by the Republic are merely rehashed from its previous pleadings before the Court in Division. The issues raised have been amply discussed and sufficiently determined and passed upon in both the assailed Decision and Resolution. Thus, the Court *en banc* sees no compelling reason to modify much more deviate from the ruling of the Special First Division.

Freeport Zones are Excluded From Philippine Customs Territory

The Republic's argument is essentially that it was a valid seizure and forfeiture because there was intent to import into Philippine customs territory. This is why it takes exception to the ruling in the assailed Decision that *"mere intent to import rice, per se, is not a taxable transaction that is subject to tax and customs laws"*.

To be properly appreciated, the term "Philippine customs territory" must be distinguished from the geographical concept of "Philippine territory" or national territory as defined in the 1987 Philippine Constitution.[104]

The SSEZ, or the SBFZ, was established pursuant to Section 12 of Republic Act No. (RA) 7227[105] (*The Bases Conversion and Development Act of 1992*), to be operated and managed as a special customs territory,[106] to wit:

> "Sec. 12. Subic Special Economic Zone. x x x
>
> The abovementioned zone shall be subjected to the following policies:

---

[103] *Peñoso v. Dana*, 549 Phil. 39, 45-46 (2007).

[104] The 1987 Constitution of the Republic of the Philippines, ARTICLE I, NATIONAL TERRITORY. -
The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

[105] An Act Accelerating the Conversion of Military Reservations into other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and Other Purposes.

[106] Later amended by RA 9400, An Act Amending Republic Act No. 7227, as amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes, to extend the benefits under RA 7227 to other special economic and free port zones.

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) **The Subic Special Economic Zone shall be operated and managed as a separate customs territory** ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. **However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines** x x x" *(Emphasis supplied)*

The term "Customs Territory" is also defined in Section 3(n) of the Implementing Rules and Regulations (IRR) of RA 7227[107], thus:

"n. **Customs Territory refers to the portion of the Philippines outside the SBF[108]** where the Tariff and Customs Code of the Philippines and other national tariff and customs laws are in force and effect." *(Emphasis supplied)*

Corollary to the above, investors can, in general, engage in any kind of business as well as import and export any article into and out of the Freeport with minimum interference from the government, in order to spur economic growth and create jobs within the SSEZ. Section 39 of the IRR of RA 7227, includes the following among the rights of enterprises operating within the SBFZ, thus:

[107] Rules and Regulations Implementing the Provisions relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority under Republic Act No. 7227.
[108] Sec. 3(c), IRR of R.A. No. 7227. SBF is the Subic Bay Freeport referred to as the Special Economic and Freeport Zone in Section 12 of the Act, a separate customs territory consisting of the City of Olongapo and the municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Philippine-U.S. Military Base Agreement as amended and within the territorial jurisdiction of Morang and Hermosa, Province of Bataan, the metes and bounds which shall be delineated in a proclamation to be issued by the President of the Philippines; provided, the pending the establishment of secure perimeters around the entire SBF, the SBF shall refer to the area demarcated by the SBMA pursuant to Section 13 hereof.

"**SEC. 39.** *Rights and Obligations.* - SBF Enterprises shall have the following rights and obligations:

a. To freely engage in any business, trade, manufacturing, financial or service activity, and **to import and export freely all types of goods into and out of the SBF, subject to the provisions of the Act, these Rules and other regulations that may be promulgated by the SBMA**; x x x" *(Emphasis supplied)*

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[109] However, in several cases, the Supreme Court had occasion to reiterate the nature of freeports and the concomitant applicability of customs laws therein.

In *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc. et al.*[110] and *Agriex Co., Ltd. vs. Hon. Titus B. Villanueva, Commissioner, Bureau of Customs*[111], however, the Supreme Court had occasion to revisit the legislative history of RA 7227. The interpellations of Senator Juan Ponce Enrile during the sponsorship of the bill[112] confirms the intent evident in the plain language of the law to make SSEZ a freeport to be considered as a separate customs territory, thus:

"**Senator Enrile:** Mr. President, I think we are talking here of sovereign concepts, not territorial concepts. The concept that we are supposed to craft here is to carve out a portion of our terrestrial domain as well as our adjacent waters and say to the world: 'Well, you can set up your factories in this area that we are circumscribing, and bringing your equipment and bringing your goods, **you are not subject to any taxes and duties because you are not within the customs jurisdiction of the Republic of the Philippines**, whether you store the goods or only for purposes of transshipment or whether you make them into finished products again to be reexported to other lands.'

x x x x x x x x x

My understanding of a "free port" is, we are in effect carving out a part of our territory and make it as if it were foreign territory for purposes of our customs laws, and that people can come, bring their goods, store them there and bring them out again, as long as they do not come into the domestic commerce of the Republic.

---

[109] *Amores v. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29,2010, citing *Twin Ace Holdings Corporation v. Rufina and Company*, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376
[110] G.R. Nos. 164171, 164172 and 168741, February 20, 2006
[111] G.R. No. 158150, September 10, 2014.
[112] Records, Senate 8th congress, Session (January 14, 1992).

> We do not really care whether these goods are stored here. The only thing that we care is for our people to have an employment because of the entry of these goods that are being discharged, warehoused and reloaded into the ships so that they can be exported. That will generate employment for us. For as long as that is done, we are saying, in effect, that we have the least contact with our tariff and customs laws and our tax laws. **Therefore, we consider these goods as outside of the customs jurisdiction of the Republic of the Philippines as yet, until we draw them from this territory and bring them inside our domestic commerce.** In which case, they have to pass through our customs gate. I thought we are carving out this entire area and convert it into this kind of concept." *(Emphasis supplied)*

Later on, in *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[113] the Supreme Court discussed "The Special Economic Zone Act of 1995"[114] which created the Philippine Economic Zone Authority (PEZA) and Ecozones.

It came to the same conclusions that 1) the law mandated management and operation of Ecozones as a separate customs territory, separate and distinct from the customs territory; and 2) Customs Territory is comprised of the national territory of the Philippines outside of the proclaimed borders of the Ecozone.

We therefore quote with approval the finding of the Court in Division, to wit:

> "Indubitably, by legislative fiat the SSEZ shall be regarded as a separate customs territory. In other words, while the SSEZ is geographically located within the Philippines, it is deemed as a separate customs territory and regarded in law as a foreign soil.[115] **As a foreign territory, importations into SSEZ are exempted from customs duties and taxes** and the government shall have, to a certain extent, minimum interference not only to the business that investors may engage in, but also to the articles that they import into and out of the zone. **It goes without saying, however, that the right of investors in SSEZ to import goods and articles is not absolute but subject to the limitation that goods or articles which are absolutely prohibited by law cannot be allowed entry into the SSEZ.**" *(Emphasis supplied)*

---

[113] G.R. No. 190506, June 13, 2016.
[114] RA 7916, as amended by RA 8748.
[115] *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.*, G. R. No. 149671, July 21, 2006.

Only Actual Importation into Philippine Customs Territory is Considered Taxable

According to Section 1202 of the TCCP, "importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unload therein . . . and is deemed terminated upon payment of the duties, taxes, and other charges due upon the articles, or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or . . . until they have legally left the jurisdiction of the customs."[116]

In *Viduya vs. Berdiago*,[117] this has been interpreted to mean "Philippine territorial jurisdiction". However, it is to be noted that such case law was promulgated prior to RA 7227 when the SSEZ was established.

Given the foregoing, the facts show that the 420,000 bags of Indian White Rice consigned to Metro Eastern Trading Corporation were imported into the SSEZ, a foreign territory as far as customs officials are concerned. The facts also show that until its seizure, the subject goods remained in SBMA-maintained warehouses still within the SSEZ.

Were the subject goods ever imported into Philippine customs jurisdiction considering that they were seized while in the freeport?

The simple answer is no.

The Republic argues that mere intent to unload is sufficient to commence importation, and therefore, a taxable event, citing the *Feeder International* case. However, as the Court in Division pointed out in the assailed Resolution, the Republic's reliance on *Feeder International* is misplaced because the facts therein are not on all fours with the case at bar.

We uphold the finding of the Court in Division, thus:

> "While indeed the Supreme Court stated therein that 'mere intent to unload is sufficient to commence importation', the same was followed by the statement: '[a]nd "intent", being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore can only be proved by

---

[116] *General Travel Service, Ltd. vs. David*, G.R. No. L-19259. September 23, 1966.
[117] G.R. No. L-29218, October 29, 1976.

> unguarded, expressions, conduct and circumstances generally. **Thus, it must be construed in light of the Supreme Court's finding therein that the vessel entered the Philippine Customs Territory when it anchored at Guiuanon Island, Guimaras, Iloilo. Unlike in *Feeder International Line,* MV Vinalines Mighty carrying petitioner's Indian White Rice never entered the Philippine Customs Territory as it remained within the SSEZ.**" *(Emphasis supplied)*

It necessarily follows that the attempts of the Republic to show "intent to import" are, at best, irrelevant, and the evidence the Republic relies on to prove the same, inconclusive.

A review of Mr. Guha's testimony[118] shows that due to being prevented by the Indonesian government from unlading the 420,000 bags of Indian White Rice at its original destination, the Jakarta, Indonesia port, Amira Foods was compelled to temporarily store the same within the SSEZ to avoid mounting demurrage charges and for transshipment purposes.

Mr. Guha testified as follows:

ATTY. DE CASTRO:
> x x x Page 22 of the decision, the Commissioner of customs *(sic)* said there was importation because all the shipping documents indicate port of Subic as the port of destination. What can you say about this?

x x x x x x x x x

MR. GUHA:
> The customs in Manila did not consider that, the first set of documents which were issued for the leg of the journey to Jakarta, Indonesia. Number one, **we were asked by the local locator company to make the documents as per laws of the free port at Subic** and submit the same to customs.

ATTY. DE CASTRO:
> Ok.

MR. GUHA:
> We did comply with the request and this request was not only sent once but many times to us. **On that request we changed the shipping documents and then submitted the same as per local Subic, SBMA laws.**

---

[118] TSN, Deposition of Mr. Protik Guha on December 12, 2013.

ATTY. DE CASTRO:

Ok, now in page 22 to 23 of the decision, the commissioner of customs again concluded that there was importation because the memorandum of agreement which you earlier identified between Amira and Metro Eastern reveals an agreement on the withdrawal of the subject shipment. What can you say about this?

x x x x x x x x x

MR. GUHA:

The Memorandum of Agreement was made for transshipment purposes and this was to be given to the local lawyer at that time from Amira, from us, and **it also took into account an eventuality, and in case there is the possibility of taking these goods or, into the territory of the Philippines, then the due law of the land would be followed, that due taxes or, if any, applicable, would be paid and then only taken into the territory of Philippines.** It was a transhipment agreement. It was not an agreement to sell.

ATTY. DE CASTRO:

Why do you know that this Memorandum of Agreement was a transhipment agreement?

MR. GUHA:

Because it was under my supervision that this agreement was made. I had given the brief to the attorney and he had made this as per local Philippine laws.

ATTY. DE CASTRO:

Ok. Last question. In page 23 of the decision which you said you read, the Commissioner stated that you negotiated with NFA-licensed entities for the sale of the subject shipment. **The Commissioner then says that if the shipment is for transhipment, why would Amira negotiate with local buyers?** What can you say about this?

x x x x x x x x x

MR. GUHA:

Well, number one, the cargo belong to us and were the owner of that cargo, and Amira, after the threat *[of seizure]*, that became actually a reality, we took notice of the fact that there is definitely some maybe companies or people who want this cargo to be sold to them. That was number one. Number two that **it was an option considered only for the fact that any astute businessman would like to have the minimum of losses because a transhipment would again involve the expense of freight, and loading into the vessel then chartering or another vessel. So this was taken as an option, and hence we chose to speak to licensed importers, between people who had legitimate licenses, from the NFA in the Philippines to maybe sell this cargo to them.**

ATTY. DE CASTRO:
Did you ever sell a sack of rice to a local importer here in the Philippines, Mr. Witness?

MR. GUHA:
Not even one sack of rice was taken out of the freeport. *(Emphasis supplied)*

The Republic alleges that since the Bill of Lading, Packing List and Commercial Invoice, Fumigation Certificate, Inward Foreign Manifest, SGS Inspection Certificate of Quality and Certificate of Origin, as determined by the District Collector of the Port of Subic all indicated "Port of Subic" as the shipment's Port of Destination, this is indicative of intent to import as opposed to a transhipment. However, even the Republic's witness, District Collector Albano testified that unless the above documents indicated "Port of Subic" as the new port of discharge, the rice cargo would not have been allowed to be unloaded within the SSEZ.[119] Mr. Guha likewise testified that Amira Foods was instructed by Container Bridge, the clearing agent based in Manila, to amend the shipping documents and make new shipping documents for Subic Port so that the vessel would be allowed to come into Subic Port and for the cargo to be allowed to be discharged at the warehouse in the SSEZ.[120]

In other words, Amira Foods was constrained to amend the shipping documents of MV Vinalines Mighty so that the vessel would be allowed entry to the Port of Subic, where arrangements for the temporary storage of the rice cargo were made.

As regards the Republic's allegation that the inclusion of trucking charges in the Memorandum of Agreement (MOA) dated March 26, 2012 between Metro Eastern and Amira Foods were indicative of "intent to import", *We* agree with the interpretation of the Court in Division, thus:

> "With regard to the provisions in the Memorandum of Agreement between petitioner and Metro Eastern Trading Corporation on the withdrawal of the cargo and payment of taxes/duties with the BOC and its Annex indicating the payment of duties and taxes and trucking services as well as the negotiations petitioner had with NFA licensed entities, **the same simply bolsters petitioner's proposition that payment of taxes and duties shall be made at the appropriate time and stage should the commodity eventually enter the Philippine customs territory**. The undisputed fact, however, remains that petitioner did

[119] Exhibits "P-31" to "P-37".
[120] TSN, Deposition of Mr. Protik Guha on December 12, 2013, *id.* at Note 1, pp. 760-762.

not bring the Indian White Rice to the Philippine Customs Territory at the time of seizure and forfeiture, thus, outside the reach of CMO NO. 20-2001 anent the requirement of securing import permit from NFA." *(Emphasis supplied)*

On the subject of the MOA, Mr. Guha also testified as follows:

SOLICITOR GENERAL ACANTILADO:

> I am referring to letter B of the duties and obligations of the second party which under the Memorandum of Agreement is Metro Eastern Trading Corporation. What do you understand, Mr. Guha of a ...towards withdrawal order signed by the duly authorized personnel of the first party? By withdrawal order, what is your understanding of this one?

MR. GUHA:

> First of all, this was looked at in two parts. The first part being that, when the goods are in a freeport under... consigned to Metro Eastern Trading, ok? When there is a transhipment, you have to withdraw the goods and put it on the vessel, right? That's number one. **Number two, is that the purpose, of course the purpose of the entire contract, is transhipment but in case in a contingency basis if you see, we have to withdraw and take the goods in territorial orders or territorial area of the Philippines, they would only do so by paying the requisite taxes and duties applicable for an import, or the law of the land.**

SOLICITOR GENERAL ACANTILADO:

> What about requisite tax payment receipt issued by the Bureau of Customs? What is your understanding of this as stated in the Memorandum of Agreement?

MR. GUHA:

> I was made to understand by the counsel who have drafted this in Manila that **there are taxes and duties to be paid in case in a contingency plan we have to withdraw and take it into the territorial...territory of the Philippines. So, hence, we made sure that in case as a contingency we ever plan to do that, we would pay the taxes and duties of the land, but completely it was transhipment first, this was just a contingency, this was in case anybody withdraws**... And I'm the owner, right? And I'm the custodian, I'm the main custodian of the cargo. Nobody can take the cargo without my permission.

SOLICITOR GENERAL ACANTILADO:

> Why would a contingency plan be included in the Memorandum of Agreement if, as you stated during your direct examination, the purpose of the Memorandum of Agreement is simply for transhipment and is not a contract to sell?

MR. GUHA:

> Yes, because **for the simple reason that in case there is a need, that's all. We are just covering contingency.** And nobody takes out the goods. It's onboard, **nobody takes out the goods without either our permission or without following the rule of the land.** Here, the goods are in a freeport, we're not in...it's a freeport, no man's land. I can take the goods out and take it back to India or tranship it to somewhere since it is temporarily stored. *(Emphasis supplied)*

Indubitably evident from Mr. Guha's testimony is that the possibility of Amira Foods importing to Philippine Customs Territory remained open if negotiations with local buyers who had NFA licenses materialized. This, however, remained to be a contingency in the event that transhipment did not push through. On this point, the Court *en banc* is of the opinion that preparation for a contingency should not be penalized, much less taxed, since the taxable event has not yet come to pass.

What is also clear is that if Amira Foods decided to import into Philippine Customs Territory, the appropriate taxes and duties for the importation would be paid. The apparent deciding factor on whether to transship or to import was whatever would cut the most business losses. However, this choice was taken away from Amira Foods when the 420,000 bags of Indian White Rice consigned to Metro Eastern Trading Corporation were prematurely and invalidly seized, forfeited, and auctioned off.

Compliance with Requisites for Immediate Exportation Inapplicable

The Republic likewise faults Amira Foods for failing to file an admission entry or T/AP which, it concluded, "negates any intent to export thereafter". It argues that an exception to Section 1202 of the TCCP is transit cargo for immediate exportation. If the goods were intended merely as transit goods, Amira Foods, through its consignee, Metro Eastern Trading Corporation, should have complied with the Joint-Memorandum Order dated August 21, 2008 which requires the filing of an admission entry or T/AP. It should have likewise complied with the requisites for transit cargo as laid down in *Commissioner of Customs vs. Court of Tax Appeals, et al.*[121]

"Transit cargo" is article arriving at any port from another port or place noted in the carrier's manifest and destined for transshipment to another local or foreign port.[122] In the aforecited case, this is an exception to the rule on importation or entry of goods into the customs territory, *viz:*

[121] G.R. Nos. 171516-17, February 13, 2009.
[122] *Id.* See Sec. 3519 of the TCCP, *Words and Phrases Defined.*

"Under Section 1202 of the TCCP, importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port.

An exception to this rule is transit cargo entered for immediate exportation. x x x"[123]

As Amira Foods correctly argues, the Republic's reliance on *Commissioner of Customs vs. Court of Tax Appeals, et al.* is misplaced because transit cargo entered for immediate exportation presupposes that the goods had been entered or imported into Philippine Customs Territory first. As previously discussed, clearly this is not the case here as the 420,000 bags of Indian White Rice stayed within the SSEZ until its seizure.

As for the failure to file an admission entry or T/AP, even Atty. Tuazon, OIC, Senior Deputy Administrative-Operations, SBMA, recognized that *"the consignee (of the 420,000 bags of Indian White Rice) is allowed at least 30 days to file an entry before the goods can be considered unclaimed and abandonment mechanism to be initiated"* in his April 16, 2012 letter addressed to Major Manuel.[124]

Hence, *We* agree with the findings of the Court in Division, to wit:

"Interestingly, simple perusal of the Joint Memorandum Order dated August 21, 2008 reveals that **the filing of an admission entry or T/AP is the responsibility of the freeport locator or enterprise.** Section 1301 of the TCCP[125] even provides that imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft. In this case, it is undisputed that the last bag of Indian White Rice was discharged on April 20, 2012,[126] thereby giving petitioner until May 20, 2012 within which to file an admission

[123] *Id.*, G.R. Nos. 171516-17, February 13, 2009.
[124] Exhibit "R-8", CTA Docket Vol. IV, p. 1824.
[125] SEC. 1301. *Persons Authorized to Make Import Entry.* - Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading,
(b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney -in -fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful (RA 7651, June 04, 1993)
[126] *Id.* at Note 7, p. 1149, par. 4.

> entry or T/AP. **On May 18, 2012 or two days before the lapse of the thirty (30)-day period to file an admission entry or T/AP, petitioner received the WDL seizing its Indian White Rice. Thus, petitioner cannot be faulted for failing to file an admission entry or T/AP since the Indian White Rice was already seized prior to the lapse of the prescribed period to do so."** *(Emphasis supplied)*

This brings us to the discussion on the validity of the WSD and Order of Forfeiture issued by the District Collector of the Port of Subic against the 420,000 bags of Indian White Rice which was affirmed by the COC.

No Legal Basis for Seizure of Shipment

The Republic justifies the seizure, detention, and auction of Amira Foods' rice shipments on the purported illegality thereof, on account of the absence of import permits from the NFA, citing Section 2530(f) of the TCCP.

First, the question has to be asked: For goods that enter the SBFZ, who has the authority to institute seizure proceedings and to issue WSDs?

This was precisely what was answered by the Supreme Court in the *Agriex* case[127] where it ruled that both the SBMA and the BOC have the power to do so, albeit with limitations. In the case of the SBMA, such power is limited only to cases involving violations of RA No. 7227 or its IRR. In the case of Collector of Customs-instituted seizure proceedings and issuance of WSD, such decision or order is subject to review by the COC.

The relevant excerpts of the *Agriex* case are quoted below:

> "The Court declares that **the Collector of Customs was authorized to institute seizure proceedings and to issue WSDs in the Subic Bay Freeport, subject to the review by the Commissioner of Customs**. Accordingly, the proper remedy to question the order or resolution of the Commissioner of Customs was an appeal to the CTA, not to the CA.
>
> Although RA No. 7227 is silent as to the person or entity vested with the authority to seize and forfeit or detain goods and articles entering the Subic Bay Freeport, the implementing rules and

[127] *Ibid.* See Note 111.

regulations (IRR) of R.A. No. 7227 contained the following provisions, to wit:

> Sec. 11. ***Responsibilities of the SBMA.*** - Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have the following responsibilities:
>
> x x x x
>
> f. Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and these Rules in the SBF:
>
> x x x x
>
> (4) **to seize articles, substances, merchandise and records considered to be in violation of the law and these Rules, and to provide for their return to the enterprise or person from whom they were seized, or their forfeiture to the SBMA**; ...
>
> B. Transactions with the Customs Territory
>
> x x x x
>
> Sec. 52. *Seizure of Foreign Articles.* - **Foreign articles <u>withdrawn transported or taken in commercial quantities from the SBF to the Customs Territory</u> without payment of duties and taxes, shall be subject to seizure and forfeiture proceedings** pursuant to the pertinent provisions of the Tariff and Customs Code and the National Internal Revenue Code of the Philippines, without prejudice to any criminal and/or administrative actions that may be instituted against the person/persons liable/responsible therefor.
>
> C. Taxes and Fiscal Obligations
>
> x x x x
>
> Sec. 60. *Search, Arrest, and Seizure by Customs Officials.* - Persons, baggage, vehicles and cargo entering or leaving the SBF are subject to search by Customs officials as a condition to enter or leave the SBF.

> Customs officials are authorized to examine any merchandise held by the SBF Enterprises during regular business hours.
>
> **Customs officers may seize any article found during a Customs search upon entering or leaving the SBF to be in violation of any provision of the customs laws for which a seizure is authorized, and such seizure shall be disposed of according to the customs laws.** Articles which are prohibited or excluded from the SBF under the rules and regulations of the SBMA which are found by the Customs officials during an audit, examination or check within the SBF may be seized by them and turned over to the SBMA for disposition.
>
> The SBMA may secure the assistance of and/or coordinate with Customs officers to arrest persons in the SBF for violations of the customs laws for which arrest is authorized concerning articles in the Customs Territory destined to the SBF or articles which have been removed from the SBF to the Customs Territory. (Bold underscoring supplied for emphasis)

Customs Administrative Order No. 4-93 (CAO 4-93), also known as the *Rules and Regulations for Customs Operations in the Subic Special Economic and Freeport Zone,* similarly provides the following:

> CHAPTER II. GENERAL PROVISIONS
>
> x x x x
>
> B. AUDIT, SEARCH, SEIZURE AND ARREST IN ZONE
>
> x x x x
>
> 3. SEIZURE
>
> **Any prohibited or excluded articles found upon search, or through any examination, audit or check of articles in the Zone by Customs may be seized by Customs for violations of Tariff and Customs Code of the**

> **Philippines as amended and disposed of in accordance with law.**
>
> Under these statutory provisions, both the SBMA and the Bureau of Customs have the power to seize and forfeit goods or articles entering the Subic Bay Freeport, except that SBMA's authority to seize and forfeit goods or articles entering the Subic Bay Freeport has been limited only to cases involving violations of RA No. 7227 or its IRR. There is no question therefore, that the authority of the Bureau of Customs is larger in scope because it covers cases concerning violations of the customs laws." *(Emphasis in the original and supplied)*

While goods can be freely brought in and out of the SSEZ, the above discourse provides that said goods must not be absolutely prohibited by law.

Section 2530 of the TCCP, as amended, mandates, among others, that articles of **prohibited** importation are subject to forfeiture, *viz.:*

> "SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> x x x   x x x   x x x
>
> f. **Any article of prohibited importation** or exportation, **the importation** or exportation **of which is effected or attempted contrary to law,** and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former. x x x" *(Emphasis supplied)*

The subject shipment involves 420,000 bags of Indian White Rice. The question to be asked next is whether or not this is a prohibited shipment in the eyes of the law.

The Supreme Court answered in the negative in *Secretary of the Department of Finance vs. Court of Tax Appeals (Second Division) and Kutangbato Conventional Trading Multi-Purpose Cooperative*[128], thus:

[128] G.R. No. 168137, August 7, 2013.

> "As cited by the CTA, CB Circular No. 1389 dated April 13, 1993 classified imports into three (3) categories, namely: (a) 'freely importable commodities' or those commodities which are neither 'regulated' nor 'prohibited' and the importation of which may be effected without any prior approval of or clearance from any government agency; **(b) 'regulated commodities' or those commodities the importation of which require clearances/permits from appropriate government agencies**; and (c) 'prohibited commodities' or those commodities the importation of which are not allowed by law. Under Annex 1 of the foregoing circular, **rice and corn are enumerated as 'regulated' commodities,** unlike the goods in the Geotina case, which were, at that time, classified as 'prohibited' commodities." *(Emphasis supplied)*

The next question to be asked is whether or not there has been unlawful importation of the subject shipment which is classified as a "regulated" commodity.

Unlawful importation is defined under Section 3601 of the TCCP, as amended, thus:

> "SEC. 3601. *Unlawful Importation.* - Any person who shall **fraudulently import or bring into the Philippines**, or assist in so doing, any article, **contrary to law**, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, **knowing the same to have been imported contrary to law, shall be guilty of smuggling** and shall be punished with: x x x" *(Emphasis supplied)*

In the case of rice, the NFA has the exclusive authority to import rice when necessary and when authorized by the President of the Philippines by virtue of Section 2 of Executive Order No. (EO) 1028[129]. Those who wish to import rice are required to secure an import permit from NFA prior to importation into the country pursuant to the MOA between NFA and BOC dated August 3, 2001 and CMO 20-2001 issued by the BOC on August 27, 2001.

---

[129] 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.

The requirement for an import authority issued by the NFA in the MOA reads as follows:

> "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;
>
> x x x x x x x x x
>
> 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." *(Emphasis supplied)*

CMO 20-2001, on the other hand, provides the following:

> "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
>
> 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."

While the foregoing provisions clearly require an import permit from NFA prior to importation of rice into the country, *We* uphold the finding of the Court in Division that such requirement is inapplicable to Amira Foods in the case at bar, to wit:

> "As previously discussed, the SSEZ is considered and managed as a separate customs territory or by legal fiction, as foreign territory, so as to ensure free flow or movement of goods and capital within, into and out of SSEZ. Thus, **the subject shipment of 420,000 bags of Indian White Rice, which entered and were stored in two (2) SBMA warehouses in the SSEZ, may not be considered as imported into Philippine customs territory. Otherwise stated, <u>petitioner was not required to secure import permit from NFA upon entry of the cargo into the SSEZ</u>**.
>
> The requirement to secure and present import permit from NFA becomes indispensable only when the 420,000 bags of Indian White Rice are withdrawn from the SSEZ and introduced into the Philippines customs territory, for it is only at that point that said 420,000 bags of Indian White Rice are considered imported into the country for purposes of applying the provisions CMO No. 20-2001." *(Emphasis supplied)*

Given the foregoing discussion, the precipitous seizure, forfeiture, and subsequent auction of the 420,000 bags of Indian White Rice was clearly without legal basis. Even the haste in the issuance of the WSD prior to the lapse of the thirty (30)-day period to file an admission entry or T/AP is suspect, not to mention the "poisoning the well" tactic used in the media in declaring the subject goods as "smuggled" to give apparent legitimacy to the seizure.

While it is not this Court's office to speculate on the motives of the Republic in doing so, perhaps some insight can be garnered from the SMS or text messages[130] from purported employees of the BOC received by Mr. Saumit Ghosh, Amira Foods' representative who physically supervised the unloading and storage of the 420,000 bags of Indian White Rice into the SBMA-maintained warehouses, thus:

> "a) SMS from Mr. Amit Chandramani (09178864035) as follows:-
>
> > 'Mr. Amit Chandramani return call thank you' - Received on 9th May, 2012 time 20:41:13
>
> b) SMS from Mr. Amit Chandramani (09178864035) as follows:-
>
> > 'Mr. Gosh, are you coming to manila?' - Received on 10-May- 2012, time 12:59:51.

[130] Exhibit "P-73", CTA Docket Vol. 111, pp.1600-1601.

C) SMS from Rick (09175580883) as follows:-

'U didn't call.so were it seems that ur not anymore interested!' - Received on 12-May-2012, time 00:03:46

d) SMS from Rick (09175580883) as follows:-

'Ok. If that's your desisyon.ok. will sis your rice tomorrow. Will do the sisure order.' - Received 2-May-2012, time 00:10:39.

e) SMS from Hill (09172530806) as follows:-

'Don't tell others that we are talking to you'. - Received-12-May-2012, time 13:45:20

f) SMS from Hill (09172530806) as follows:-

'Is he going to see me, your shipment has been alerted by customs.' Received on 12-May-2012, time 13:54:59

g) SMS from Rick (09175580883) as follows:-

'Meeting tomorrow with our secretary mr.hill.... ok!'. Received on 13-May-2012, time 21:35:41.

h) SMS from Rick (09175580883) as follows:-

'Im trying to call u but you are not answering!.' Received on 13-May-2012, time 22:30:36

i) SMS from Rick (09175580883) as follows:-

'Today is the last day. Ok if you don't want to talk. Will confiscate all. Received on 14-May-2012, time 10:02:51

j) SMS from Rick (09175580883) as follows:-

'You are not cooperating!'. Received on 14-May-2012, time 10:04:08.

k) SMS from Rick (09175580883) as follows:-

'We are trying to help you out with your big problem. But it seems you are not cooperating with us. and your company! Received on 14-May-2012, time 10:08:05.

l) SMS from Rick (09175580883) as follows:-

'Call hill for info. Plssnd him message!now'. Received on 14-May-2012, time 11:14:17

m) **SMS from Rick (09175580883) as follows:-**

'Wats the number of your office in manila?dont keep us waiting. because they will order the siezure/confiscate all. We are trying to help you out with that. Received on 14-May-2012, time 11:17:48.

n) SMS from Hill (09172530806) as follows:-
'Ok.' Received on 14-May-2012, time 11:22:21." (Boldfacing supplied)

Mr. Ghosh confirmed the existence of the text messages during his testimony. Curiously enough, this was neither refuted nor denied by the Republic.

We adopt the recommendation of the Court in Division "for the SSEZ, the BOC and SBMA to conduct an appropriate investigation and, at the very least, adopt measures to ensure that similar nefarious incidents are aborted. Referral of the matter to the Office of the Ombudsman may even be appropriate."

On a final note, fifty years ago, the Supreme Court in *Asaali vs. The Commissioner of Customs*[131], recognized the need to relentlessly adhere to the policy of unhesitatingly pursuing to minimize, if not do away entirely, with the evil and corruption that smuggling brings in its wake. It likewise recognized that this policy would be frustrated "if the legitimate authority vested in the government" were "to be reduced to futility and impotence in the face of an admittedly serious malady, that at times has assumed epidemic proportions."[132]

Today, fifty years later, the smuggling epidemic has yet to be curtailed, still running rampant, despite adherence to the policy of doing away with smuggling and giving the law teeth to properly arm those who are vested with authority to execute customs laws in their fight against smuggling. To be clear, this is not such a case.

As detestable those who perpetrate smuggling may be, equally abhorrent, not to mention hypocritical, are those in government who are vested with authority, apparent or otherwise, to execute customs laws impartially, but instead of so doing, exploit the same and divvy the spoils for personal gain. Neither evil is lesser than the other. The impartial hand of justice must never grade evils if only to avoid the pitfalls of being tempted to kinship with the least.

[131] G.R. No. L-24170, December 16, 1968.
[132] *Id.*

That being said, the pernicious practice of seizing cargo on the pretense of illegality in the hopes of extorting money from legitimate traders who merely seek to cut their losses and spare themselves the hassle of a lengthy legal proceeding contesting the same must be halted.

The Court, therefore, sees no error committed by the Court in Division in the assailed Decision and Amended Decision.

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The assailed Decision dated July 18, 2019 and the assailed Amended Decision dated November 22, 2019 of the Special First Division in CTA Case No. 8557 are **AFFIRMED.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO- SAN PEDRO
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