

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

**DANILO G. GALANG, doing CTA CASE NO. 8885
business under the name
and style of ST. HILDEGARD
GRAINS ENTERPRISES and
IVY M. SOUZA, doing
business under the name
and style of BOLD BIDDER
MARKETING AND GENERAL
MERCHANDISE,**

Petitioners,

-versus-

Members:

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

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

Respondents.

Promulgated:

APR 01 2016 2:29 pm

X-----X

RESOLUTION

Submitted for resolution are the following motions:

1. Petitioners' Motion for Reconsideration (Re: Resolution dated 29 April 2015) filed on June 2, 2015;¹
2. Respondents' Opposition to Petitioners' Motion for Reconsideration filed on August 3, 2015;²
3. Respondents' Motion for Partial Reconsideration (Re: Resolution dated 29 April 2015) filed on June 2, 2015;³
4. Petitioners' Ex Abundante Ad Cautelam Opposition to Respondents' Motion for Partial Reconsideration filed on July 2, 2015;⁴

¹ Docket, pp. 1181-1203.

² Docket, pp. 1328-1348.

³ Docket, pp. 1225-1241.

5. Petitioners' Motion to Strike Respondents' Motion for Partial Reconsideration filed on June 24, 2015;⁵ and
6. Respondents' Opposition to Petitioners' Motion to Strike Respondents' Motion for Partial Reconsideration filed on August 3, 2015.⁶

On April 29, 2015, this Court issued a Resolution,⁷ dismissing the Petition for Review⁸ filed by petitioners on September 1, 2014 for lack of jurisdiction. The Court ruled that the premature filing of the Petition for Review warrants a dismissal as no jurisdiction is acquired by this Court over the subject matter of the case absent Commissioner of Customs' final decision or ruling on the seizure and forfeiture proceedings related to petitioners' seized rice shipments.

Hence, the present Motions were filed.

In Petitioners' Motion for Reconsideration, petitioners heavily rely in the case of *Auyong Hian vs. Court of Tax Appeals*⁹ (the "*Auyong Hian Case*"), wherein the Supreme Court considered the pronouncement of the Commissioner of Customs as denial of the claim for refund of petitioner therein, thus, no more need to wait for further denial as the Bureau of Customs can no longer be expected to be entirely impartial. Petitioners opine that upon selling at public auction of the rice shipments, the Commissioner of Customs had already made a final decision that the same are prohibited goods.

Moreover, petitioners claim that this case is an exception to the rule on exhaustion of administrative remedies as the conduct of seizure and forfeiture proceedings is patently illegal in violation of due process, and that the issues raised in the Petition for Review are all purely legal questions, i.e., the legality of the detention, seizure, forfeiture and public auction of petitioners' rice shipments.

⁴ Docket, pp. 1258-1272.

⁵ Docket, pp. 1244-1252.

⁶ Docket, pp. 1307-1312.

⁷ Docket pp. 1164-1180.

⁸ Docket, pp. 14-85.

⁹ G.R. No. L-28782, November 27, 1981.

Respondents consequently filed its Opposition to petitioners' Motion for Reconsideration, reiterating therein that there is still no final decision of the Commissioner of Customs that can be subject to the jurisdiction of this Court, that the *Auyong Hian* Case is not on all fours with the present case as the seizure and forfeiture proceedings therein had already come to finality and that the importer therein awaited and exhausted all the appeal therein. On the other hand, issues are still pending such as the injunction issued by the Regional Trial Court of Manila (RTC-Manila), the legality of the rice importation without the NFA permit, and the seizure proceedings yet to be finalized. Lastly, all the legal issues raised by petitioners before this Court are the very same issues to be resolved before the Supreme Court, at the clear risk of being in parallel conflict with the Highest Tribunal should the courts would resolve in different opinions.

Respondents, in their Motion for Partial Reconsideration, prays that the Petition for Review be dismissed with prejudice on account of petitioners' willful and deliberate forum shopping pursuant to Section 5, Rule 7 of the Rules of Court, which provides:

"Section 5. Certification against forum shopping.-

xxx xxx xxx

xxx. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

According to respondents, when the Supreme Court issued a Temporary Restraining Order (TRO) against RTC-Manila that ordered the release of rice shipments, petitioners herein immediately moved for the release of rice shipments conditioned on the posting of the bond. This Motion was denied by the Supreme Court, but, without awaiting for the resolution of their Motion for Reconsideration therein, and in clear

disregard of the TRO, petitioners filed the same motion for release of rice shipments before the Bureau of Customs.

Moreover, respondents argue that the Petition for Review before this Court is premised on the same legal position as that of the complaint filed before the RTC Manila that is the subject of the TRO issued by the Supreme Court.

Also, the certification of non-forum shopping attached in the Petition for Review before this Court failed to state with clarity the status of each of the pending cases, sufficient to inform this Court whether these cases substantially affect and are intimately related with the Petition for Review. Lastly, respondents insist that the certification falsely declared that the pending cases in other courts have different issues and subject matter.

Petitioners filed an *Ex Abundante Ad Cautelam* Opposition to respondent's Motion for Partial Reconsideration, reiterating that the elements of *litis pendentia* are absent in this case, thus, no forum shopping, and that it complied with the requirements on certification against forum shopping.

A Motion to Strike Respondents' Motion for Partial Reconsideration was filed by petitioners in alleged violation of Section 4 Rule 15 of the Rules of Court, requiring the movant to ensure receipt of the motion by the other party at least three (3) days before the date of hearing.

An Opposition was filed by respondents to petitioners' Motion to Strike, stating therein that petitioners were not deprived of answering respondents' Motion for Partial Reconsideration because at the time respondents received the said motion, they are already fully aware that no hearing was ever conducted therein and in fact, was given an opportunity to be heard through filing of an opposition in accordance with Section 2, Rule 15¹⁰ of the Revised Rules of Court of Tax Appeals.¹¹

¹⁰ SEC. 2. Opposition. – The adverse party may file an opposition to the motion for reconsideration or new trial within ten days after his receipt of a copy of the motion for reconsideration or new trial of a decision, resolution or order of the Court.

¹¹ A.M. No. 05-11-07-CTA.

We resolve *in seriatim*.

The *Auyong Hian Case* cited by petitioners is about the question of refund of the storage charges that was advanced by the winning bidder Consolidated Tobacco Industries of the Philippines, Inc. (CTIP) in order to secure the release of the sold tobacco in public auction. Such question on refund, in an earlier Decision¹² of the Supreme Court, was remanded to the Bureau of Customs (BOC) for resolution. However, the Supreme Court, in CTIP's Motion for Reconsideration, ruled that prosecuting the issue of refund before the BOC would already result in denial of due process as the BOC had already stated that such claim for refund would definitely be denied by them. Thus, the Supreme Court declared the prosecution of the refund before the BOC unnecessary and instead the Court itself ruled on the said issue.

From the above narration, this Court cannot apply the said ruling in this case.

First, the issue resolved therein is the refund of the storage charges. As stated, the goods therein were already ruled to be illegally imported with finality. The one decided by the Supreme Court to the exclusion of administrative ruling of BOC is with respect to such refund, and not with respect to the seizure and foreclosure proceedings of the illegally imported goods.

Second, the one assailing the refund is the winning bidder, which is CTIP, and nowhere in the said ruling did CTIP question the ruling of the Supreme Court as to the legality of the importation of tobacco, nor the seizure and foreclosure proceedings, which may be subject of violation of rules on forum shopping.

Third, the denial of due process in the *Auyong Hian* refers to the refund claim of CTIP before the BOC. The Supreme Court felt the outright resolution of such claim for refund due to the

¹² G.R. No. L-28782, September 12, 1974.

unyielding negative position of the BOC. In the instant case, the alleged denial of due process is with respect to the position of BOC with respect to the seizure and foreclosure proceedings.

Lastly, the seizure and foreclosure proceedings in *Auyong Hian* has already attained finality, and in such proceedings, importer Auyong Hian was able to complete the administrative process before assailing the decision of the Commissioner of Customs before the Court of Tax Appeals, and ultimately, before the Supreme Court. In this case, however, the BOC is still in the process of seizure and forfeiture of the rice shipments, and has not yet been decided upon with finality. This is precisely what petitioners want to bypass by applying the case of *Auyong Hian*, which, obviously was not in the exact situation with that of petitioners herein.

With all the differences between *Auyong Hian* and the instant case, the former cannot be applied in petitioners' position.

On the issue of alleged violation of Section 4 Rule 15 of the Rules of Court by respondents, the Supreme Court case of *Cabrera vs. Ng*¹³ is in order, thus:

"A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon."¹⁴ "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."¹⁵

Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially

¹³ G.R. No. 201601, March 12, 2014.

¹⁴ Ibid., citing *Pallada v. RTC of Kalibo*, Aklan, Br. 1, 364 Phil. 81, 89 (1999).

¹⁵ Ibid., citing *Nufiez v. GSIS Family Bank*, 511 Phil. 735, 747-748 (2005).

complied with. Thus, in *Preysler, Jr. v. Manila Southcoast Development Corporation*,¹⁶ the Court ruled that:

The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.¹⁷ xxx." (Underlining Supplied.)

It is undisputed that the respondents' Motion for Partial Reconsideration was set to be heard on June 11, 2015. Petitioners received such Motion only on June 17, 2015. However, a day before the intended date of hearing or on June 10, 2015, this Court, in lieu of said hearing, ordered petitioners to file instead a comment thereto. Hence, upon receipt of the Motion for Partial Reconsideration by petitioners, and upon receiving the directive of this Court to file comment to the said motion, petitioners were fully aware that the said Motion was not heard on the date intended. When petitioners received the Resolution ordering them to file comment to the said Motion, they were able to file opposition thereto. Thus, notwithstanding that petitioners received a copy of the said Motion for Partial Reconsideration only five (5) days after the date set by respondents for the hearing thereof, petitioners' right to due process was not violated as they were afforded the chance to argue their position.

On the issue of forum shopping, records disclose that petitioner Galang instituted a complaint docketed as Civil Case No. CV-14-131261¹⁸ before the RTC-Manila, and sought for the following reliefs:

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

1. Upon the filing of this Petition, an ex parte Temporary Restraining Order (TRO) be immediately issued against the Defendants effective for seventy-two (72) hours to enjoin and restrain them, all

¹⁶ G.R. No. 171872, June 28, 2010, 621 SCRA 636.

¹⁷ *E&L Mercantile, Inc. vs. Intermediate Appellate Court*, 226 Phil. 299 (1986).

¹⁸ Docket, pp. 329-372.

those acting for and in their behalf, and all their agents and responsible officers, from:

- a. Implementing NFA Memorandum Circular No. AO-2K13-003;
 - b. Seizing, altering, and/or holding Plaintiff's rice shipments referred in this Petition, and those shipments, similarly situated as those in this Petition, which the Plaintiff may acquire by sale or by importation after the filing of this Petition;
 - c. Implementing any Alert Orders, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to Plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the Plaintiff may acquire by sale or by importation after the filing of this Petition
 - d. Doing any act that would prejudice Plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination
2. After a summary hearing thereon, the Temporary Restraining Order (TRO) be extended for twenty (20) days until the application for Preliminary Injunction can be heard;
 3. Pending trial on the merits, the Honorable Court issue a Writ of Preliminary Injunction enjoining and restraining Defendants, all those acting for and in their behalf, and all their agents and responsible officers from:
 - a. Implementing NFA Memorandum Circular No. A0-2K13- 003;

- b. Seizure, alerting, and/or holding Plaintiff's rice shipments referred in this Petition, and those shipments, similarly situated as those in this Petition, which the Plaintiff may acquire by sale or by importation after the filing of this Petition;
 - c. Implementing any Alert Orders, Hold Orders, and issuances and/or refusing to lift any such orders or issuances in relation to Plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the Plaintiff may acquire by sale or by importation after the filing of this Petition;
 - d. Doing any act that would prejudice Petitioner while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.
4. After trial on the merits and hearing, the Honorable Court render a Decision perpetually enjoining Respondents from committing the above-mentioned acts.

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

The Orders of the RTC-Manila granting the said complaint were ultimately appealed before the Supreme Court *En Banc* by the BOC, through a Petition for *Certiorari*,¹⁹ and now pending for decision.

On the other hand, the reliefs prayed for in the Petition for Review filed before this Court are the following:

¹⁹ Docket, pp. 211-287.

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

1. Upon the filing of this Complaint, an ex parte Temporary Restraining Order (TRO)/writ of preliminary injunction be immediately issued against the Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from conducting any public auction concerning the rice shipments subject herein whether with the MICP or POM, and from doing any acts that would prejudice Petitioner while the propriety and validity of its actions are still at issue and subject to judicial determination;
2. Pending trial on the merits, the Honorable Court issue a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction enjoining and restraining Respondent Commissioner, the Bureau of Customs, and all those acting in their behalf or pursuant to their instructions, from:
 - a. Selling or otherwise disposing the subject property, and
 - b. From doing any acts that would prejudice Petitioner while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination; and,
3. Pending trial on the merits, the Honorable Court issue an order releasing the subject rice shipments upon posting of a bond by the Petitioners in an amount equivalent to the value of the subject rice shipments as assessed and valued by the BOC and payment of the 50% out-quota tariff due on the subject rice shipments, including the demurrage and storage charges thereon, and DIRECTING THE BOC to accept and process the payments, and to immediately release all the rice shipments, which are highly perishable goods.

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

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

Undeniably, petitioners are guilty of willful and deliberate forum-shopping when they filed their Petition for Review with this Court insofar as they undertook to obtain similar reliefs based on similar facts, as those stated and sought for before the RTC-Manila.

A comparison of the reliefs sought by petitioners in the Petition for Review and in the Complaint before the RTC-Manila confirms that they are substantially similar on every point, i.e., the issuance of a TRO and thereafter of a Preliminary Injunction from conducting any action in relation to the rice shipments, and perpetually or permanently enjoining thereafter respondents from committing actions prejudicial to petitioners with respect to the rice shipments upon declaration that the shipments are indeed legal.

There can be no dispute that the prayers for relief in the two cases were based on the same attendant facts. Both cases are founded on one statement of assertion, that petitioners have rice shipments subject to seizure and public auction by the BOC due to illegal importation.

These similarities undoubtedly create the possibility of conflicting decisions from different courts.²⁰ These two actions boil down to a single issue, although the issues and reliefs prayed for may be stated differently, because the final disposition of one would constitute *res judicata* in the other.

²⁰ Sps. Arevalo vs. Planters Development Bank, G.R. No. 193415, April 18, 2012.

The identity of parties is also evident as the parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.²¹

With respect to identity of causes of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. As stated by the Supreme Court:

“This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.”²²

Both cases question the validity of petitioners’ importation of rice and it follows that all pieces of evidence, i.e., that the rice shipments were imported legally since NFA Memorandum Circular AO-2K13-03-003 is invalid, will support or establish petitioners’ causes of action in both cases.

The cause of action in the complaint filed before the RTC-Manila is the alleged nullity of NFA Memorandum Circular AO-2K13-03-003 which is allegedly violative of petitioners’ right to import rice shipments. It serves as the basis for the prayer for the TRO and Preliminary Injunction. The Petition for Review filed before this Court involves the same cause of action, inasmuch as it also invokes the nullity of the same NFA Memorandum Circular as the basis for the prayer for the TRO and Preliminary Injunction. Obviously, the cause of action which serves as the basis for the reliefs in both cases remains the same, that is, the alleged nullity of NFA Memorandum Circular AO-2K13-03-003.

²¹ Goodland Company, Inc. vs. Asia United Bank et al., G.R. No. 195546 and G.R. No. 195561, March 14, 2012.

²² Ibid., citing Villanueva v. Court of Appeals, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 714, citing Government Service Insurance System (GSIS) v. Group Management Corporation (GMC), G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 279, 313.

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of NFA Memorandum Circular AO-2K13-03-003 or should alter the designation or form of the action. The well-entrenched rule is that a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.²³

Thus, in the case of *Yap vs. Court of Appeals et al.*,²⁴ the Supreme Court ruled that:

"Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint."²⁵

What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies

²³ Goodland Company, *Supra* note 13, citing Asia United Bank v. Goodland Company, Inc. , G.R. No. 191388, March 9, 2011, 645 SCRA 205, 216-217.

²⁴ G.R. No. 186730, June 13, 2012.

²⁵ Citing Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority, G.R. No. 185159, October 12, 2009, 603 SCRA 470, 482 and Umale v. Canoga Park Development Corporation, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 162.

to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.²⁶

As stated in the case of *Sps. Arevalo vs. Planters Development Bank*:²⁷

"We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions.²⁸ To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.²⁹ The acts committed and described herein can possibly constitute direct contempt."³⁰

Indeed, petitioners have committed forum-shopping, by willfully and deliberately going to different courts to avail

²⁶ *Sps. Arevalo*, *Supra* note 13, citing *Lim v. Vianzon*, 529 Phil. 472 (2006).

²⁷ *Ibid.*

²⁸ Citing *Guevara v. BPI Securities Corporation*, G.R. No. 159786, 15 August 2006, 498 SCRA 613.

²⁹ Citing *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, 22 July 2009, 593 SCRA 440.

³⁰ Rules of Court, Rule 7:

SEC. 5. *Certification against forum shopping.* The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Underlining supplied.)

themselves of multiple judicial remedies founded on similar facts and raising substantially similar reliefs.

Petitioners insist that they had not committed forum shopping when they disclosed in the Verification and Certification against Forum Shopping appended in the Petition for Review the filing of Petition for Declaratory Relief (NFA Memorandum Circular No. AO-2K13-03-003) with prayer for a Temporary Restraining Order and/or Preliminary Injunction docketed as Special Civil Action No. 02-2013; Complaint for Preliminary Injunction with prayer for a Temporary Restraining Order and/or Preliminary Injunction, docketed as Civil Case No. 14131261; and the Petition for Certiorari docketed as G.R. No. 211375 filed by respondents herein before the Supreme Court. The said certification reads:

"1. I (Ivy M. Souza) filed a Petition for Declaratory Relief (NFA Memorandum Circular No. AO-2K13-03-003) with prayer for a Temporary Restraining Order and/or Preliminary Injunction entitled "IVY M. SOUZA, doing business under the name and style BOLD BIDDER MARKETING AND GENERAL MERCHANDISE vs. NATIONAL FOOD AUTHORITY (NFA), HON. ORLAN C. CALAYAG, in his capacity as the Administrator of the National Food Authority, NATIONAL FOOD AUTHORITY IV-SOUTHERN TAGALOG BATANGAS REGIONAL OFFICE, HON. TOMAS R. ESCAREZ, in his capacity as the Regional Director of the NFA-IV Southern Tagalog Batangas Regional Office and as local representative of the NFA, NFA COUNCIL, HON. PROCESO J. ALCALA, in his capacity as Chairman of the NFA Council, BUREAU OF CUSTOMS (BOC), HON. RUFINO B. BIAZON, in his capacity as the Commissioner of Customs, DISTRICT COLLECTOR, in his capacity as the District Collector of the Port of Batangas and as local representative of BOC, and OFFICE OF THE SOLICITOR GENERAL" docketed as Special Civil Action No. 02-2013 and pending before Branch 5 of the Regional Trial Court of Lemery, Batangas. The said action, however, is one seeking the nullity of NFA Memorandum Circular No. AO-2K13-03-003 and is entirely different and distinct from the present case.

Additionally, I (Danilo G. Galang) filed a complaint for a Complaint for Preliminary Injunction with prayer for a Temporary Restraining Order and/or Preliminary Injunction

entitled "DANILO G. GALANG, doing business under the name and style ST. HILDEGARD GRAINS ENTERPRISES vs. BUREAU OF CUSTOMS – THE DISTRICT COLLECTORS OF THE PORTS OF MANILA, NORTH HARBOR AND SOUTH HARBOR, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor" docketed as Civil Case No. 14131261 and pending before Branch 11 of the Regional Trial Court of Manila City. The said case, however, is one seeking the issuance of a Writ of Injunction enjoining the Defendants therein from implementing NFA Memorandum Circular No. AO-2K13-03-003 and is entirely different and distinct from the present case.

Finally, a Petition for Certiorari (with Application for Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction) entitled "SECRETARY PROCESO J. ALCALA, as Secretary if (*sic*) the DEPARTMENT OF AGRICULTURE (DA) and as Chairman of the National Food Authority (NFA) Council; and the BUREAU OF CUSTOMS (BOC), represented by COMMISSIONER JOHN PHILLIP P. SEVILLA vs. HONORABLE JUDGE CICERO D. JURADO, JR., in his capacity as Presiding Judge of Branch 11, Regional Trial Court in Manila; DANIL G. GALANG, doing business under the name and style ST. HILDEGARD GRAINS ENTERPRISES; and IVY M. SOUZA, doing business under the name and style BOLD BIDDER MARKETING AND GENERAL MERCHANDISE" docketed as G.R. No. 211375 and pending before the Supreme Court was filed by the Bureau of Customs and Secretary Proceso J. Alcala. The said case, however, is seeking the nullity of the Orders issued by Hon. Judge Cicero D. Jurado, Jr., was not filed (*sic*) us, and is entirely different and distinct from the present case.

The present case, on the other hand, is seeking the Review of the Actions done by Respondent Bureau of Customs in the Seizure Proceedings with Seizure Identification Nos. 342 to 344-2014 and 346 to 355-2014 via a Petition for Review under Republic Act 9282 otherwise known as An Act Expanding the Jurisdiction of the Court of Tax Appeals. Clearly, the aforementioned cases and the present case have different causes of action." (Underlining supplied.)

The ruling of the Supreme Court in the case of *Goodland Company Inc. vs. Asia United Bank et al.*³¹ is in order, thus:

"We find that the above certification still fell short of the requirement of the rule on forum shopping. While petitioner disclosed the pendency of Civil Case No. 03-045 it filed earlier, it qualified the nature of the said case by lumping it together with other pending related cases. Petitioners simultaneous attestation that it has not commenced any other action or filed any claim, involving the same issues in any court implies that the pending related cases mentioned therein do not involve the same issues as those raised by it in the subsequently filed Civil Case No. 06-1032. Consequently, petitioner has filed a certificate that is partly false and misleading because Civil Case No. 06-1032 squarely raised the issue of the nullity of the REM, which was in fact the principal issue in Civil Case No. 03-045." (Underlining supplied.)

Applying the ratio of the Supreme Court, the fact that petitioners consistently insisted in their statement in the Certificate against Forum Shopping that the Petition for Review filed before this Court involves an entirely different and distinct issues and causes of action from the other related cases mentioned therein obviously results in the filing of a false and misleading Certificate of Non-Forum Shopping.

To make matters worse for petitioners, the Supreme Court *En Banc*, upon filing of BOC's Petition for *Certiorari*, issued a Resolution,³² stating:

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

G.R. No. 211375 (Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture and as Chairperson of the National Food Authority Council; and the Bureau of Customs, represented by Commissioner John Phillip P. Sevilla vs. Hon. Cicero D. Jurado, Jr., in his capacity as Presiding Judge of Branch 11,

³¹ *Supra* note 20.

³² G.R. No. 211375, March 18, 2014.

Regional Trial Court in Manila; Danilo G. Galang, doing business under the name and style of St. Hildegard Grains Enterprises; and Ivy M. Souza, doing business under the name and style of Bold Bidder Marketing and General Merchandise). Acting on the Petition for Certiorari with Application for Temporary Restraining Order, Status Quo Ante Order and/or Writ of Preliminary Injunction, the Court resolved, without giving due course to the petition, to

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

(b) ISSUE the TEMPORARY RESTRAINING ORDER prayed for, effective immediately and continuing until further orders from this Court, enjoining the (1) court a quo from implementing the assailed Orders dated January 23, 2014 and February 27, 2014, Amended Order dated February 28, 2014, and Writ of Preliminary Injunction dated January 24, 2014, as amended by the Order dated February 27, 2014; (2) court a quo from proceeding with the case a quo (Civil Case No. CV-14-131261); and (3) private respondents Danilo G. Galang and Ivy M. Souza from undertaking any and all action with respect to the subject rice shipments and any rice shipments similarly situated as those in the case a quo which they may acquire by sale or by importation after the filing of the case a quo; and

(c) CONSOLIDATE this case with G.R. No. 211146 (Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture and as Chairperson of the National Food Authority Council; and the Bureau of Customs, represented by

Commissioner John Phillip P. Sevilla
vs. Hon. Emmanuel C. Carpio, in his
capacity as Presiding Judge of Branch
16, Regional Trial Court in Davao City
and Joseph Mangupañ Ngo). Perlas-
Bernabe, J., on official leave.

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

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

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

This Court takes note of the fact that petitioners filed their
Petition for Review before this Court after a Petition for
Certiorari was filed before the Supreme Court. Petitioners'
cause of action is anchored on the validity of NFA Memorandum
Circular AO-2K13-03-003. By seeking to nullify the said NFA

Memorandum Circular, petitioners trifled with court processes and exposed the courts to the possibility of rendering conflicting decisions. Worse, petitioners sought to accomplish what is prohibited – filing of the Petition for Review before this Court when expressly enjoined by the Supreme Court to do so. Thus, it matters not that the factual findings and conclusions of law of this Court and the Supreme Court may concur. It is the fact that our judicial system is rendered vulnerable to such uncertainties and vexations that any and all efforts to forum shop should be treated with aversion.³³

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

Petitioners' brazen and deliberate acts of repeated forum shopping in all stages of litigation are written all over this case.³⁴ All the foregoing mentioned, there is clandestine intent on the part of petitioners to violate the rules against forum shopping.

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

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

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

³³ *Supra* note 24.

³⁴ *Supra* note 20.

SO ORDERED.



ROMAN G. DEL ROSARIO

Presiding Justice

ON LEAVE

ERLINDA P. UY

Associate Justice


CIELITO N. MINDARO-GRULLA

Associate Justice