

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FABROSSI FOOD GROUP INC.,
ENZED TRADE INC., D. ASILO
MEATSHOP, D.E.A. MEAT
TRADING AND IMPORT CORP.,
FOOD SPHERE INC., VIRGINIA
FOOD, INC., and PHILIPPINE
ASSOCIATION OF MEAT
PROCESSOR'S, INC. (PAMPI),

Petitioners,

- versus -

CTA EB NO. 2742
(CTA Case No. 10111)

Present:

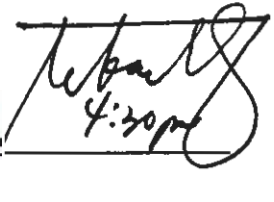
DEL ROSARIO, *PJ*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES JJ.

BEREAU OF CUSTOMS as
represented by the Hon.
Commissioner REY LEONARDO
B. GUERRERO,

Respondent.

Promulgated:

FEB 28 2025



X-----X

DECISION

FERRER-FLORES, J.:

At bar is a **Petition for Review**¹ seeking the reversal of the Decision dated September 22, 2022² (assailed Decision), and the Resolution dated February 28, 2023,³ (assailed Resolution) of the Court of Tax Appeals (CTA) First Division⁴ in CTA Case No. 10111, the dispositive portions of which read:

¹ Filed on March 24, 2023, *Rollo*, pp. 1-21.

² *Rollo*, pp. 53-91.

³ *Id.*, at 48-51.

⁴ Penned by Associate Justice Marian Ivy F. Reyes-Fajardo and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan.

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Assailed Decision:

WHEREFORE, in light of the foregoing considerations, the instant Petition is **DENIED** for lack of merit. The application for the issuance of TRO and/or Writ of Preliminary Injunction is hereby **DENIED**.

SO ORDERED.

Assailed Resolution:

WHEREFORE, in light of the foregoing considerations, petitioners' Motion for Reconsideration [of the Court's Decision dated September 22, 2022] is **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioners are members of the **Philippine Association of Meat Processors Inc. (PAMPI)** engaged in the importation of mechanically deboned meat (MDM).

- a) PAMPI is a non-stock domestic corporation with place of business at Suite 203-204 Sunrise Condominium, Ortigas Ave., Greenhills, San Juan City, Metro Manila;
- b) Petitioner **Fabrossi Food Group Inc.** is a domestic corporation with place of business at V&F Ice Plant and Cold Storage Inc., Unit 5, Brgy. Mambungan, Sumulong Highway, Antipolo City;
- c) Petitioner **Enzed Trade** is a domestic corporation with place of business at Unit 222-223 Pacific Regency, 760 Pablo Ocampo St., Malate, Manila;
- d) Petitioner **D. Asilo Meatshop** is a sole proprietorship with place of business at 129 A. Mabini Street, Brgy. Sta. Lucia, Novaliches Quezon City;
- e) Petitioner **D.E.A Meat Trading and Import Corp.** is a domestic corporation with place of business at 131 A. Mabini Street, Brgy. Sta. Lucia, Novaliches Quezon City;
- f) Petitioner **Foodsphere Inc.** is a domestic corporation with place of business at 560 West Service Road, Paso de Blas, Valenzuela, Manila;

g) Petitioner **Virginia Food, Inc.** is a domestic corporation with place of business at Sitio Younglife, Cogon, Compostela, Cebu.⁵

Respondent **Bureau of Customs (BOC)**, as represented by **Commissioner Rey Leonardo B. Guerrero**, is the government agency in charge of the collection of import and export duties.⁶

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the Division Decision are as follows:⁷

On April 27, 2017, Executive Order No. 23 (EO No. 23, s. 2017) was issued extending the effectivity of the Most-Favoured-Nation (MFN) rates of duty on certain agricultural products including Mechanically Deboned Meat (MDM).

Under EO No. 23, s. 2017, MDM is subject to the following duty rates:

2017	2018	2019	2020	2021
5%	5%	5%	5%	40%

Section 6 of the EO provides:

SECTION 6. Effectivity. — This Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the Philippines, and **shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in R.A. No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply.**

On February 14, 2019, Republic Act (RA) No. 11203 otherwise known as “An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, and For Other Purposes” (Rice Tariffication Law) was enacted. RA No. 11203 took effect on March 5, 2019. RA No. 11203 amended some provisions of RA No. 8178 otherwise known as “An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, with Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and for other Purposes” (Agricultural Tariffication Act).

On May 23, 2019, respondent issued the assailed CMC No. 131-2019, which provides for the application of the higher MFN rate (40% for MDM) due to the effectivity of RA No. 11203, as follows:

⁵ Par. 8, *Petition for Review, Rollo*, pp. 4-5.
⁶ Par. 9, *Petition for Review, Rollo*, p. 5.
⁷ *Rollo*, pp. 33-38.

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**To: ALL DEPUTY COMMISSIONERS
ALL SERVICE DIRECTORS
ALL DISTRICT/PORT COLLECTORS
ALL OTHERS CONCERNED**

**SUBJECT: APPLICABLE DUTY RATES FOR PRODUCTS
UNDER EXECUTIVE ORDER NO. 23, SERIES OF 2017
RELATIVE TO REPUBLIC ACT NO. 11203 (RICE
TARIFFICATION ACT)**

With the effectivity of R.A. No. 11203 (Rice Tariffication Act), all concerned are informed of the reversion to the higher Most-Favoured-Nation (MFN) rates duty on certain agricultural products as part of the Philippine concessions or commitments under the World Trade Organization (WTO) Decision on Waiver relating to Special Treatment for Rice of the Philippines listed under E.O. 23, s. 2017.

Accordingly, the Bureau of Customs' Electronic to Mobile (E2M) System is hereto updated to reflect the modified rates pursuant to the said E.O.

The Philippine Tariff Finder (PTF) was also updated by the Tariff Commission to reflect the said MFN rates.

For your information and guidance.

For records purposes, please confirm the dissemination of this Circular throughout your offices within fifteen (15) days from receipt thereof.

(Sgd.)

REY LEONARDO B. GUERRERO
Commissioner, BOC

The District Collector of the Manila International Container Port ordered petitioners to pay additional duties amounting to P220,387,073.00, plus surcharges and interests, as indicated in the Demand Letters issued to petitioners. This amount reflects the uncollected tariff differential of 35% for MDM for the period March 5, 2019 to May 16, 2019.

On June 13, 2019, EO No. 82 (EO No. 82, s. 2019) was issued as the economic conditions then warranted the continued application of the reduced rate of duties on certain agricultural products to mitigate the impact of high prices of goods (5% for MDM). EO No. 82, s. 2019 partly reads:

WHEREAS, the present economic condition warrants the continued application of the reduced rate of duties on certain agricultural products to mitigate the impact of high prices of goods;

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WHEREAS, Section 1608 of RA No. 10863 authorizes the President of the Philippines, upon the recommendation of the National Economic and Development Authority (NEDA), to increase, reduce or remove existing rates of import duty; and

WHEREAS, the NEDA Board recommends the maintenance of the tariff rates under EO No. 23 for mechanically deboned meat of chicken and turkey, and turkey meat and its offals.

...

SECTION 3. Levy on Articles. — **Upon the effectivity of this Order**, all articles which are specifically listed in Annex A hereof and are entered into, or withdrawn from warehouses in the Philippines for consumption, shall be levied the MFN rates of duty as therein prescribed.

SECTION 6. Effectivity. — This Order shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation, and shall be applicable until 31 December 2020.

On June 18, 2019, respondent issued CMC No. 144-2019, informing all BOC personnel of the issuance of EO No. 82, s. 2019 and the updating of the BOC E2M System to reflect the modified nomenclature and rates of import duty on certain agricultural products.

On July 11, 2019, petitioners filed a Petition with the Court praying that:

1. **A TEMPORARY RESTRAINING ORDER** be issued enjoining Respondent from:

1.1. Further imposing the higher duty rate of 40% on the importation of Mechanically Deboned Meat;

1.2. Demanding the payment of differential rate of 35% from March 05, 2019 up to May 16, 2019 within the 15-day period as reflected in its Demand Letters; and

1.3. Imposing the corresponding surcharges and interests as stated in its Demand Letters.

2. An ORDER be issued declaring **Customs Memorandum Circular No. 131-2019** null and void for violating the Constitution as well as pertinent laws.

3. An ORDER be issued directing the Bureau of Customs to return the overpayments made by the aggrieved importers. ¶

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On July 29, 2019, the Court issued *Summons* requiring respondent to file and to serve upon petitioners an *Answer* to the *Petition* within fifteen (15) days from notice.

On August 8, 2019, instead of an *Answer*, respondent filed a *Motion to Dismiss* the *Petition*. According to respondent, the *Petition* assailing the validity of CMC No. 131-2019 has become moot and academic with the issuance of CMC No. 144-2019, which superseded CMC No. 131-2019.

On August 13, 2019, petitioners filed a *Manifestation with Motion to Declare as Nugatory the Demand Letters issued by Respondent*, stating that: (1) on August 1, 2019, they manifested in open court their intention to amend their *Petition* due to a supervening event that transpired after the filing of the case, specifically, the BOC reverted to the imposition of 5% MFN tariff rate as reflected in the E2M System; and (2) that they were withdrawing their prayer for the issuance of the TRO and/or WPI in relation to respondent's continued imposition of the 40% tariff rate. Petitioners shall maintain their prayer for a TRO and/or WPI against respondent's demand to pay the amount of P220,387,073.00, representing the differential rate of 35% from March 5, 2019 to May 16, 2019 and the imposition of surcharges and interests.

On August 22, 2019, respondent filed respondent's *Comment* to petitioners' *Manifestation with Motion to Declare as Nugatory the Demand Letters Issued by Respondent* and argued that the subject of the *Petition* is CMC No. 131-2019 and not the assessment letters and that Court has no jurisdiction to inquire into the assessment letters issued by the BOC District Collector.

On September 6, 2019, petitioners filed a *Reply* and asserted that the Court has jurisdiction to pass upon all issues ancillary to the main case. Petitioners also assert that no assessment letters were issued, but rather demand letters were issued for several weeks after the release of petitioners' goods from the port of entry.

On September 12, 2019, during the scheduled hearing of petitioners' *Urgent Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction*, petitioners presented their first witness, Fay Bernardo, who testified by way of a Judicial Affidavit. The presentation of petitioners' second witness, Joseph Jerome D. Ong, was dispensed with as his testimony would merely corroborate Fay Bernardo's testimony. In the same hearing, respondent was directed to file a *Manifestation* within ten (10) days or until September 23, 2019, on whether respondent would pursue the collection of the differential tariff of 35% covering the period March 5, 2019 to May 16, 2019.

On September 16, 2019, respondent filed a *Manifestation* informing the Court that respondent would pursue the collection of the assessed differential tariff of 35% covering the period March 5, 2019 to May 16, 2019.

On September 24, 2019, petitioners filed a *Manifestation* stating that on September 23, 2019, they filed a *Comment on Respondent's Motion to Dismiss with Manifestation* through registered mail, and attached an

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advance copy of petitioners' *Comment*. In the *Comment*, petitioners claim that the Petition is not only to seek the nullification of CMC No. 131-2019 but also its adverse effects to the importers, which are:

1. The **ISSUANCE OF DEMAND LETTERS** (Not Assessment) demanding Petitioners to pay the 35% differential rate amounting to **P220,387,073.00** for the periods of March 05, 2019 up to May 16, 2019.
2. The **IMPOSITION AND COLLECTION OF THE HIGHER RATE OF 40%** (instead of only 5%) for importing Mechanically Deboned Meat from May 17, 2019 up to June 18, 2019.

On September 26, 2019, petitioners filed a *Manifestation* stating that due to respondent's re-imposition of the 5% MFN tariff rate on the importation of MDM, their Petition has to be amended, and prayed to admit their *Amended Petition* filed as a matter of right under Section 2, Rule 10 of the Rules of Court, which prays for the following:

1. **TEMPORARY RESTRAINING ORDER (TRO) and/or WRIT OF PRELIMINARY INJUNCTION** be issued enjoining Respondent from:
 - 1.1. Enforcing its demand for the payment of the **differential rate of 35%** from March 05, 2019 up to May 16, 2019; and
 - 1.2. Imposing the corresponding surcharges and interests as stated in the said Demand Letters until the final resolution of the case.
2. After due notice and hearing, a decision be issued declaring **Customs Memorandum Circular No. 131-2019** null and void for violating the Constitution and pertinent laws.
3. After due notice and hearing, a decision be issued declaring the DEMAND LETTERS issued by District Collector, ATTY. ERASTUS SANDINO B. AUSTRIA null and void for being ultra vires, and for violating the Constitution and pertinent laws.

On December 4, 2019, petitioner filed a *Manifestation* on the current situation affecting the meat industry in relation to CMC No. 131-2019.

On January 21, 2020, petitioners Frabelle Corp. and Century Pacific Food, Inc. filed an *Ex-Parte Motion to Withdraw as Petitioners* as their respective managements deemed their further involvement in the case unnecessary.

On February 26, 2020, petitioners filed a *Motion to Admit Attached Supplemental Petition*, which prays that:

1. The instant Supplemental Petition be admitted as part of the original pleading as amended; 7

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2. The Philippine Associate of Meat Processors, Inc. (PAMPI) be included as one of the Petitioners; and
3. The Demand Letters issued by Acting District Collector of Manila International Container Port be declared null and void for being *ultra vires*.

On March 16, 2020, petitioner Pampanga's Best, Inc. filed a *Second Ex-Parte Motion to Withdraw as One of the Petitioners*.

On July 8, 2020, the Court resolved to admit the *Amended Petition* of petitioners. The Court granted the *Ex-Parte Motion to Withdraw* filed by Frabelle Corp. and Century Pacific Food, Inc. Petitioners' prayer for the issuance of a TRO and/or WPI was held in abeyance pending the marking of petitioners' documentary exhibits.

On July 16, 2020, the Court granted the *Second Ex-Parte Motion to Withdraw as One of the Petitioners* filed by petitioner Pampanga's Best, Inc.

On August 26, 2020, respondent filed a *Manifestation and Motion* asserting, among others, that the two (2) letters of PAMPI to respondent requesting respondent for assistance and clarification on the 40% duty instead of 5%, on imported MDM cannot be considered as a valid protest under Section 1006 of the CMTA since PAMPI is not the party adversely affected by the decision or ruling of the District Collector of Customs. On the same date, respondent filed a *Comment (On Petitioners' Motion to Admit Supplement Petition)*. Respondent asserts that the Motion to Admit Supplemental Petition of petitioners should be denied since the transactions, occurrences, or events alleged in the Supplemental Petition are not connected or related to the Amended Petition; and that it is fatally defective since the District Collector was not impleaded in the case.

On September 8, 2020, petitioners filed their *Comment on the Manifestation dated August 25, 2020*, stating among others, that no assessment letters were issued by the District Collector but rather demand letters. On the same date, petitioners filed their *Reply to Comment dated August 25, 2020*, asserting that the demand letters mentioned pertains to the collection of the 40% tariff based on EO No. 23, s. 2017.

On January 27, 2021, petitioners Velfram Foods Corporation and Premier Food Choice International Corporation filed their *Third Ex-Parte Motion to Withdraw as One of the Petitioners*.

In a *Resolution* promulgated by the Court on February 8, 2021, the Court denied respondents' *Motion to Dismiss the Amended Petition* and admitted petitioners' *Supplemental Petition* and granted the *Third Ex-Parte Motion to Withdraw as One of the Petitioners*.

On March 8, 2021, petitioners filed their *Formal Offer of Documentary Exhibits (For the issuance of a Temporary Restraining Order and/or Preliminary Injunction)*.

On March 15, 2021, petitioners filed a *Motion for the Issuance of Status Quo Order (Re: Post-Clearance Audit covering the period of March*

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5, 2019 to June 16, 2019, among others) praying that respondent defer the conduct of the Post Clearance Audit covering the period March 5, 2019 to June 16, 2019. On May 18, 2021, respondent filed an *Opposition (To Petitioners' Motion for Issuance of Status Quo Order)*.

On May 18, 2021, respondent filed an *Opposition (To Petitioners' Motion for Issuance of Status Quo Order)*, stating among others, that the conduct of a Post Clearance Audit is sanctioned under Section 1000 of the CMTA and that petitioners failed to establish a clear and positive right which should be judicially protected. On the same date, respondent filed respondent's *Comment/Answer* to petitioners' Amended and Supplemental Petitions.

On June 14, 2021, petitioners filed their *Reply (With Leave to Respondent's Comment/Answer dated April 28, 2021)*.

On June 15, 2021, petitioners filed their *Comment (Re: Respondent's Opposition to Petitioners' Motion for Issuance of Status Quo Order dated April 28, 2021)*, arguing that before respondent can legally collect the differential rate of 35%, the issue on the constitutionality of CMC No. 131-2019 should be settled first.

On June 29, 2021, the Court resolved that the following be stricken from the records: (1) petitioners' *Reply* be stricken from the records, under Section 10, Rule 6 of the Rules of Court, as amended, since respondent did not attach an actionable document in the *Comment/Answer*; and (2) petitioners' *Comment (Re: Respondent's Opposition to Petitioners' Motion for Issuance of Status Quo Order dated April 28, 2021)* for being a proscribed submission under Section 5 (c), Rule 15 of the Rules of Court, as amended. The Court denied petitioners' *Motion for Issuance of Status Quo Order* for failure of petitioners to allege any right that may be violated because of the Post Clearance Audit of the BOC.

On September 10, 2021, petitioners filed their *Pre-Trial Brief*, the *Judicial Affidavit* of Felix O. Tiukinhoy, Jr., and the *Judicial Affidavit* of Maria Ermida Viñas.

On September 16, 2021, the Pre-Trial Conference was held via videoconferencing. Counsel for petitioners confirmed upon clarification, that the present Petition was filed under Rule 65 of the Rules of Court, and is in the nature of a special civil action for Prohibition. The parties agreed that the resolution of the application of the TRO and/or WPI shall be consolidated with the determination of the case on the merits. The Court ordered the parties to submit their respective Memoranda and ordered that the present case, together with the prayer for the issuance of a TRO and/or WPI, shall be deemed submitted for decision and resolution.

On September 23, 2021, petitioner Food Crafters, Inc. filed a *Fourth Ex-Parte Motion to Withdraw as One of the Petitioners*.

On October 8, 2021, respondent filed a *Motion to Exclude*, praying that the following Assessment Letters be excluded from the case given the withdrawal of the following parties from the case:

Date	Importer	Amount (in ₱)
June 13, 2019	Velfram Food Corp.	909,941.00
May 28, 2019	Century Pacific Food, Inc.	41,297,291.00
June 27, 2019	Premier Food Choice International Corporation	3,271,753.00
June 10, 2019	Frabelle Corp.	72,760,866.00
May 31, 2019	Food Crafters, Inc.	8,476,837.00
September 9, 2019	Century Pacific Food, Inc.	41,297,291.00
September 9, 2019	Premier Food Choice Corporation	3,271,753.00

On October 8, 2021, respondent filed respondent's *Pre-Trial Brief* and *Memorandum*.
On October 22, 2021, petitioners filed their *Memorandum*. On November 25, 2021, the case was deemed submitted for decision.

As earlier mentioned, the CTA First Division denied the *Petition for Review*. Petitioners' *Motion for Reconsideration [of the Court's Decision dated September 22, 2022]* was likewise denied.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Aggrieved, petitioners filed the present *Petition for Review* on March 24, 2023.

The Court then ordered respondent to file its comment.⁸ Thereafter, respondent filed its *Manifestation with Motion to Admit (With Attached Comment)* on August 3, 2023.⁹

In the Resolution dated February 28, 2024,¹⁰ the Court granted respondent's *Motion to Admit (With Attached Comment)* and correspondingly admitted respondent's *Comment (on Petition for Review dated March 17, 2023)*. In the same resolution, the case was submitted for decision.

ISSUES

In assailing the Decision and Resolution of the CTA First Division, petitioners assign the following errors:¹¹

⁸ Resolution dated June 26, 2023, *Rollo* Vol. II, p. 505-506.
⁹ *Rollo* Vol. II, pp. 559-576.
¹⁰ *Id.*, at 618-620.
¹¹ *V. Grounds for Review and Statement of Issues, Petition for Review*, *Rollo* Vol. I p. 9.

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- I. Customs Memorandum Circular (CMC) No. 131-2019¹² is invalid for being violative of the petitioners' right to due process; and,
- II. The District Collector is not an indispensable party in the case filed by the petitioners.

Petitioners' arguments

In support of the issues raised, petitioners forward the following arguments:

First, CMC No. 131-2019 is an administrative issuance which was intended to implement an existing law, and therefore, should have been published prior to its implementation. Although there is valid basis for the issuance of CMC No. 131-2019, its sudden implementation with proper prior notice to the importers violated their right to due process.

Petitioners contend that publication is an essential requirement of due process. Failure of respondent to strictly comply with such requirement warrants the nullification of the assailed CMC No. 131-2019 and the subsequent demand letters which were anchored upon it. Assuming *arguendo* that CMC No. 131-2019 did not need any publication, proper notice should still have been given to the importers before being slapped with such huge percentage of additional duty.

Second, petitioners maintain that the District Collectors are not indispensable parties in this case. Even without impleading the said District Collectors, a final determination can be had of this action because it is the BOC, as represented by its Honorable Commissioner, who is the indispensable party.

Similarly, District Collectors cannot be considered as necessary parties. A necessary party is defined as one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of an action. The District Collectors are not even necessary parties since a complete relief can be afforded in the suit even without their participation. ✓

¹² SUBJECT: Applicable Duty Rates for Products Under Executive Order No. 23, Series of 2017 Relative to Republic Act No. 11203 (Rice Tariffication Act), May 23, 2019.

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It is the Commissioner who issued the assailed circular pursuant to the power vested in him by law. The same circular was used as basis for the issuance of the demand letters by the District Collectors against the petitioners. Thus, the filing of the *Petition* against the BOC, as represented by the Commissioner himself, suffices.

Respondent's arguments

In refutation, respondent avers that interpretative regulations and those merely internal in nature, that is regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. CMC No. 131-2019 is an office memorandum issued by a superior officer informing his subordinates of some development relative to their task of collecting duties and taxes, and thus, need not be published.

Moreover, respondent claims that failure to implead BOC's District Collectors as indispensable parties is fatal to the instant petition. Respondent believes that the Amended and Supplemental Petitions filed before the Court Division assail the validity of the Assessment Letters issued by the BOC District Collectors Erastus Sandino Austria and Guillermo Pedro A. Francia. As issuing officers, they must be impleaded to afford them due process. Hence, for failure to implead the District Collectors as respondents in the case is fatal to petitioners' cause and will render all actions by this Court void for want of authority, not only as to the present parties but even as to those absent.

RULING OF THE COURT *EN BANC*

The *Petition for Review* is bereft of merit.

After an assiduous review of the records and the parties' arguments, the Court finds no cogent reason to reverse or modify the assailed Decision and Resolution.

Timeliness of the Petition for Review

Before delving into the merits of the instant case, the Court *En Banc* shall first determine its jurisdiction.

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Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

Sec. 3. *Who may appeal; period to file petition.* –

(b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Petitioners received the Resolution denying its *Motion for Reconsideration [of the Decision dated September 22, 2022]* on March 9, 2023. Counting 15 days therefrom, petitioners had until March 24, 2023 within which to elevate the appeal before this Court. Petitioners, thus, timely filed the present *Petition for Review* on March 24, 2023.

CMC No. 131-2019 need not be published.

Petitioners heavily hinge its petition on the argument that it was denied due process when CMC No. 131-2019 was implemented without prior publication. Lacking such publication, CMC No. 131-2019 together with the subsequent demand letters anchored upon it must be nullified.

Petitioners are mistaken. CMC No. 131-2019 is an interpretative rule that does not require publication prior to its effectivity. We quote with affirmance the discussion of the CTA First Division in the assailed Decision:

The Supreme Court in *Astec* provides several exceptions to the requirement of publication, including the exception on interpretative regulations, as follows:

Procedural due process demands that administrative rules and regulations be published in order to be effective.

XXX XXX XXX

There are, however, several exceptions to the requirement of publication. First, **an interpretative regulation does not require publication in order to be effective.** The applicability of an interpretative regulation "needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed." Second, **a regulation that is merely**

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internal in nature does not require publication for its effectivity. It seeks to regulate only the personnel of the administrative agency and not the general public. Third, a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties does not require publication in order to be effective.

When an administrative rule is interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law has already prescribed. If the administrative rule goes beyond merely providing for the means that can facilitate the implementation of the law but substantially increases the burden of those governed, the agency concerned is required to give to those directly affected a chance to be heard, and to be duly informed, before the new issuance is given the force and effect of law.

In the case at bar, CMC No. 131-2019 is addressed to the personnel of the BOC: Deputy Commissioners, Service Directors, District/Port Collectors, and all others concerned. CMC No. 131-2019 was issued to inform and guide the addressees regarding the updated duty rates in the BOC's E2M System and in the Philippine Tariff Finder pursuant to EO No. 23, s. 2017. It provided an instruction to confirm dissemination — *"for records purposes, please confirm the dissemination of the Circular throughout your offices within fifteen (15) days from receipt thereof."* Clearly, CMC No. 131 gives no real consequence more than what EO No. 23, s. 2017 has already prescribed. It is internal in nature and is issued to serve as a guideline for BOC personnel.

As CMC No. 131-2019 is an interpretative rule, the three inquiries that the Court is free to make in case of a legislative rule, *viz.*: (1) whether the rule is within the delegated authority of the administrative agency; (2) whether it is reasonable; and (3) whether it was issued pursuant to proper procedure, are of no moment. Thus, petitioners' allegations that respondent cannot arrogate to itself the powers reserved to the President under the Flexible Tariff Clause and assuming that said power may be delegated, it is an undue delegation of power, are unavailing.

xxx xxx xxx

This Court finds that CMC No. 131-2019 does not override EO No. 23, s. 2017. It is consistent and in harmony with EO No. 23, s. 2017, which it seeks to apply and implement. It merely echoed the MFN rates in the EO and applied the effectivity clause therein.

Considering that publication is not necessary for CMC No. 131-2019, the issuance of the same by Commissioner Rey Leonardo B. Guerrero is valid.

DECISION

CTA EB No. 2742 (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) vs. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero
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The BOC District Collectors are not indispensable parties.

Petitioners argue that the District Collectors who issued the demand letters are not indispensable parties, rather it is the BOC, as represented by the Commissioner that is the indispensable party. Thus, even without impleading the District Collectors, a final determination on the case may be had.

On the contrary, respondent claims that the District Collectors are indispensable parties since they are the ones who issued the assessment against petitioners, which petitioners are assailing.

We agree with petitioners.

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest; a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.¹³

Upon closer scrutiny of the records, petitioners are primarily assailing the issuance and implementation of CMC No. 131-2019 without prior publication. For petitioners, CMC No. 131-2019 must be declared null and void for violation of its right to due process. Collaterally, and consequential to the prayer for nullification of CMC No. 131-2019, petitioners likewise pray for the nullification of the demand letters, which obviously sprung from CMC No. 131-2019. Respondent's theory that petitioners are mainly assailing the demand letters is, therefore, unavailing.

Applying the definition of an indispensable party, the District Collectors who issued the demand letters need not be impleaded since the *Petition for Prohibition*, filed before the Court in Division, can move forward and a final determination can be had in the absence of the said District Collectors. Petitioners are correct in impleading the agency itself that issued

¹³ *Metropolitan Bank & Trust Company vs. Alejo*, G.R. No. 141970, September 10, 2001.

the subject CMC No. 131-2019. The BOC impleaded as respondent already suffices to have a full and complete determination of the case.

Even lending credence to respondent’s theory that petitioners are in fact mainly assailing the demand letters and not CMC No. 131-2019, the District Collectors are still not considered as indispensable parties. The District Collectors form part of respondent BOC and under the supervision of the Commissioner. There is no evidence that, apart from issuing the demand letters for the payment of the deficiency 35%, the interest of the District Collectors stands to be affected or injured if final determination of the case will be had.

Imposition of Most Favoured Nation (MFN) Rates under CMC No. 131-2019, implementing Executive Order No. 23 is valid.

At this juncture, the Court reiterates that the imposition of the MFN rates from March 5, 2019 to May 16, 2019 is valid since there was no law or executive order in effect at the time imposing the reduced 5% tariff rate for mechanically MDM. Below is the outline of period and the applicable treaty or Executive Order as laid down by the CTA First Division:

Hence for clarity, the following is a timeline of the periods showing the treaty or the executive orders covering the reduced 5% MFN tariff rate on MDM and QR on Rice, exempting the Philippine Government from the MFN rates. The timeline clearly shows that from March 5, 2019 to June 12, 2019, there was no treaty obligation, law, or executive order, exempting the Philippines from the 40% MFN rate or a reduction thereof that was in effect.

Periods	Treaty or EO
December 27, 2006 to June 30, 2012	The Philippines communicated a draft to the WTO containing modifications on the tariff schedules (including 5% on MDM) in relation to the special treatment on rice, with a view to extending special treatment for seven years, until June 30, 2012. The draft was approved by the WTO effective December 27, 2006 until June 30, 2012.
June 28, 2007 to June 30, 2012	On June 15, 2007, under EO No. 627, s. 2007 , the Philippines reduced the tariff for MDM from 40% to 5%.EO No. 627, s. 2007 was effective as of June 28, 2007.
July 25, 2014 to June 30, 2017	WTO Decision on Waiver Relating to Special Treatment for Rice of the Philippines (Waiver) contained in WTO Document WT/L/42 provides that the WTO obligations

DECISION

CTA EB No. 2742 (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) vs. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero

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	of the Philippines for rice shall be waived until June 30, 2017 and that the concessions under the waiver (including 5% MFN tariff rate on MDM) shall be terminated upon the expiration of the waiver.
November 12, 2015 to June 30, 2017	Under EO No. 190, s. 2015 , as a concession to the reinstatement of the QR on rice imports, the MFN rate for MDM was reduced to 5% for the period of the waiver (up to June 30, 2017). EO No. 190, s. 2015 was effective as of November 12, 2015.
May 24, 2017 to March 4, 2019	Under Executive Order EO No. 23, s. 2017 , the reduced MFN rate of 5% for MDM was extended until June 30, 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first. EO No. 23, s. 2017 was effective as of May 24, 2017.
March 5, 2019 to June 12, 2019	Effective date of RA No. 11203 . From March 5, 2019 to June 12, 2019, there was no treaty obligation, law, or executive order, exempting the Philippines from the 40% MFN rate or a reduction thereof that was in effect.
June 13, 2019 to December 31, 2020	Under EO No. 82, s. 2019 , the reduced MFN rate of 5% for MDM was imposed upon the effectivity of said EO. EO No. 82, s. 2019 was effective as of June 13, 2019.

Without any treaty obligation, law or executive order allowing for the reduced 5% rate, the Court is constrained to rule that the imposition of the 35% differential rate from March 5, 2019 to May 16, 2019 is justified. Although understandably prejudicial to petitioners' interest, regrettably, the hands of the Court are tied to apply the 40% MFN rate.

Prescinding from the above, there is no basis to declare CMC No. 131-2019 and the resulting demand letters null and void. This Court finds no reason to reverse or modify the Decision of the CTA First Division.

WHEREFORE, the instant **Petition for Review** is **DENIED** for lack of merit. The Decision dated September 22, 2022 and the Resolution dated February 28, 2023 in CTA Case No. 10111 are hereby **AFFIRMED**.

DECISION

CTA EB No. 2742 (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) vs. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero
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SO ORDERED.


CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

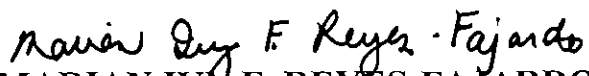

ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


With Separate Opinion
CATHERINE T. MANAHAN
Associate Justice


With Concurring Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IV F. REYES-FAJARDO
Associate Justice

DECISION

CTA EB No. 2742 (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) vs. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero
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LANEE S. CUI-DAVID

Associate Justice

ON LEAVE

HENRY S. ANGELES

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 the Court.



ROMAN G. DEL ROSARIO

Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**FABROSSI FOOD GROUP INC., CTA *EB* No. 2742
ENZED TRADE INC., D. ASILO (CTA Case No. 10111)**

**MEATSHOP, D.E.A. MEAT
TRADING AND IMPORT CORP.,
FOOD SPHERE INC., VIRGINIA
FOOD, INC., and PHILIPPINE
ASSOCIATION OF MEAT
PROCESSORS, INC. (PAMPI),**
Petitioners,

Present:

**DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.***

-versus-

**BUREAU OF CUSTOMS as
represented by the Hon.
Commissioner REY
LEONARDO B. GUERRERO,**
Respondent.

Promulgated:

FEB 28 2025

X ----- X

SEPARATE OPINION

MANAHAN, *J.*:

I agree with the conclusion reached in the *ponencia*, by denying the instant Petition for Review on the following grounds: (1) Customs Memorandum Circular (CMC) No. 131-2019 need not be published; (2) the Bureau of Customs (BOC) District Collectors are not indispensable parties; and (3) the imposition of the Most Favoured Nation Rules under CMC No. 131-2019, implementing Executive Order No. 23 is valid.

However, I respectfully express my reservation with respect to how respondent, through the District Collectors, implemented the collection of the duty differential rate at thirty-five percent (35%). *an*

On this score, Section 1000 of Title X, Post Clearance Audit, of the Customs Modernization and Tariff Act (CMTA) provides:

“SEC. 1000. Audit and Examination of Records. –

Within three (3) years from the date of final payment of duties and taxes or customs clearance, as the case may be, the Bureau may conduct an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall include statements, declarations, documents, and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the importer for duties, taxes, and other charges, including any fine or penalty, to ensure compliance with this Act.”

In relation thereto, Section 4.1.1 of Customs Administrative Order (CAO) No. 01-2019 echoed the above-quoted provision of the CMTA, as follows:

“4.1 Audit and Examination of Records.

4.1.1. Within three (3) years from the date of final payment of duties and taxes or Customs Clearance, as the case may be, the Bureau may conduct an audit examination, inspection, verification and investigation of records pertaining to any goods declaration, which shall include statements, declarations, documents, and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the Importer for duties, taxes, and other charges, including any fine or penalty.”

The above-quoted provisions refer to the power of the BOC, through the Post Clearance Audit Group (PCAG), to conduct an audit and examination after the date of final payment of duties and taxes or customs clearance. Without the conduct of a post clearance audit, a taxpayer cannot be expected to pay what was otherwise indicated in the original assessment of the goods when they were released.

In case of a deficiency assessment by PCAG, paragraph f of 5.5.1 of CAO No. 01-2019 provides: 

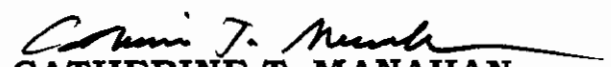
“f. Reconsideration or Reinvestigation on Audit Findings. The Importer adversely affected by the deficiency assessment issued by the PCAG and approved by the Commissioner may file a request for reconsideration or reinvestigation to the Commissioner within fifteen (15) days from receipt of the Demand Letter.

For requests for reinvestigation, the Importer shall submit all relevant supporting documents in support thereof within thirty (30) days from the date of filing, otherwise, the request shall be denied. The Bureau, through the PCAG, shall have sixty (60) calendar days from submission of complete documents to resolve the request.”

Thus, in case of an adverse finding by PCAG, the party affected may file a request for reconsideration or reinvestigation with the Commissioner within fifteen (15) days from receipt of the Demand Letter, which is likewise issued by PCAG.

Here, a perusal of the records shows that it was the District Collectors who sought to collect the thirty five percent (35%) duty differential rate by sending Demand Letters¹ to petitioners. Without a post clearance audit, the demand letters sent by the District Collectors may have been premature. Furthermore, petitioners may have been effectively deprived of their remedy to elevate the case to the Commissioner by way of a request for reconsideration or reinvestigation, considering that there was no deficiency assessment by PCAG.

Considering the foregoing, I vote to **PARTIALLY GRANT** the Petition for Review, by remanding the case to the Court in Division to determine whether the issuance of the subject demand letters was tainted with grave abuse of discretion and whether petitioners had no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.


CATHERINE T. MANAHAN
Associate Justice

¹ Annex “E and series” of the Petition for Review, EB Docket, pp. 186-199.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FABROSSI FOOD GROUP INC.,
ENZED TRADE INC., D. ASILO
MEATSHOP, D.E.A. MEAT
TRADING AND IMPORT CORP.,
FOOD SPHERE INC., VIRGINIA
FOOD, INC., and PHILIPPINE
ASSOCIATION OF MEAT
PROCESSOR'S, INC. (PAMPI),
Petitioners,

CTA EB No. 2742
(CTA Case No. 10111)

Present:

DEL ROSARIO, P.L.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN
PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

- versus -

BUREAU OF CUSTOMS as
represented by the Hon.
Commissioner REY LEONARDO B.
GUERRERO,

Respondent.

Promulgated:
FEB 28 2025

x ----- x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, in denying the Petition for Review filed on 24 March 2023¹ and affirming the assailed Decision dated 22 September 2022² and assailed Resolution dated 28 February 2023³ both issued by this Court's First

¹ Rollo, pp. 1-29.
² Id., pp. 53-91.
³ Id., pp. 48-51.

CONCURRING OPINION

CTA EB Nos. **2742** (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) v. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero

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Division. Indeed, Customs Memorandum Circular (CMC) No. 131-2019⁴, being an internal regulation, need not be published.

I submit this Concurring Opinion to highlight that the Court of Tax Appeals (CTA), being a court of limited jurisdiction⁵, cannot nullify the assessment/demand letters issued by the District Collectors since the same are not reviewable by this Court.

Sections 1136 and 1137 of the Customs Modernization and Tariff Act (CMTA) of 2016 provide:

...

SEC. 1136. *Review by the CTA.* — Unless otherwise provided in this Act or by any other law, the party aggrieved by the **ruling or decisions of the Commissioner** may appeal to the CTA, **in the manner and within the period prescribed by law and regulations**. Decisions of the Secretary of Finance when required by this Act, may likewise be appealed to the CTA.

Unless an appeal is made to the CTA in the manner and within the period prescribed by law and regulations, the ruling or decision of the Commissioner or the Secretary of Finance shall be final and executory.

SEC. 1137. *Exclusive Jurisdiction of the Bureau.* — Jurisdiction over imported goods and goods for exportation shall be **exclusive to the Bureau**, or the Secretary of Finance, when under review by the latter, subject to the proceedings described in this title.⁶

...

As a corollary, Section 7 of Republic Act No. (RA) 1125⁷, as amended by RA 9282⁸, provides the exclusive appellate jurisdiction of this Court to review, by appeal the decision of the Commissioner of Customs (COC), as follows: 

⁴ Applicable Duty Rates for Products Under Executive Order No. 23, Series of 2017 Relative to Republic Act No. 11203 (Rice Tariffication Act).

⁵ *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp., et al.*, G.R. No. 158540, 08 July 2004.

⁶ Italics in the original text, emphasis and underscoring supplied.

⁷ AN ACT CREATING THE COURT OF TAX APPEALS.

⁸ AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA). ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

CONCURRING OPINION

CTA EB Nos. 2742 (CTA Case No. 10111)

Fabrossi Food Group Inc., Enzed Trade Inc., D. Asilo Meatshop, D.E.A. Meat Trading and Import Corp., Food Sphere Inc., Virginia Food, Inc., and Philippine Association of Meat Processor's, Inc. (PAMPI) v. Bureau of Customs as represented by the Hon. Commissioner Rey Leonardo B. Guerrero

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X ----- X

...

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

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

...

(4) **Decisions of the Commissioner of Customs** in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs[.]⁹

...

Moreover, Sections 1106 and 1107 of the CMTA of 2016 provide:

...

SEC. *Protest*. — When a ruling or decision of the District Collector or customs officer involving goods with valuation, rules of origin, and other customs issues is made, except the fixing of fines in seizure cases, **the party adversely affected may appeal by way of protest against such ruling or decision by presenting to the Commissioner at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth the objection to the ruling or decision in question and the reasons therefore.**

Subject to the approval of the Secretary of Finance, the Commissioner shall provide such rules and regulations as to the requirement for payment or nonpayment of the disputed amount and in case of nonpayment, the release of the importation under protest upon posting of sufficient security.

SEC. 1107. *Protest Exclusive Remedy in Protestable Case*. — **In all cases subject to protest**, the interested party who desires to have the action of the District Collector reviewed, shall file a protest as provided in **Section 1106 of this Act**, **otherwise the action of the District Collector shall be final and conclusive.**¹⁰

...

As can be gleaned from the foregoing, the CMTA prescribes that a party adversely affected by a ruling or decision of the customs collector may protest such ruling or decision upon payment of the amount due and, if aggrieved by

⁹ Emphasis supplied and italics in the original text.

¹⁰ Emphasis supplied and italics in the original text.

CONCURRING OPINION

CTA EB Nos. **2742** (CTA Case No. 10111)

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the action of the customs collector on the matter under protest, may have the same reviewed by the COC. It is only after the COC shall have made an adverse ruling on the matter may the aggrieved party file an appeal to the CTA.

Additionally, the fact that there was no decision by the COC to appeal from highlights petitioners' failure to exhaust administrative remedies prescribed by law. Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he or she avail of all administrative processes afforded him, such that if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought, otherwise, the premature resort to the court is fatal to one's cause of action.¹¹ While there are exceptions to the principle of exhaustion of administrative remedies, it has not been sufficiently shown that the present case falls under any of the exceptions.

All told, I vote to **DENY** the instant Petition for Review; and, thereby **AFFIRM** the First Division's Decision dated 22 September 2022 and Resolution dated 28 February 2023.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

¹¹ *Spouses Ramon and Ligaya Gonzales v. Marmaine Realty Corporation, represented by Mariano Manalo*, G.R. No. 214241, 13 January 2016.