REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

UNIVERSAL PACIFIC FOOD CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Respondents.

CTA CASE NO. 9151

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, ***JJ.***

Promulgated:

NOV 11 2020
10:42 a.m.

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AMENDED DECISION

RINGPIS-LIBAN, J.:

For resolution is Petitioner's **Motion for Reconsideration**[1] filed on September 24, 2018, asking that the Court reconsider its Decision[2] dated August 31, 2018 which dismissed the Petition for Review for lack of jurisdiction.

On September 27, 2018, the Court issued a Resolution[3] requiring Respondents to comment. However, Respondents failed to file Comment on the motion, as stated in the Records Verification report of the Judicial Records Division issued on October 23, 2018.[4]

On January 4, 2019, Atty. Christine C. Maza-Guarin, Executive Clerk of Court III of the Third Division informed counsels for Petitioner, Bartolome Salazar Palomar & Associates, of the need to deposit an additional ₱1,000.00 for Sheriff Fees within ten (10) days from notice, in accordance with *En Banc* Resolution No. 2-2017.[5]

[1] Docket, pp. 263-376.
[2] *Id.*, pp. 250-261.
[3] *Id.*, p. 278.
[4] *Id.*, p. 279.
[5] *Id.*, p. 280.

Due to Petitioner's failure to comply[6] with the mandate, on May 20, 2019, another letter was sent by Atty. Maza-Guarin, informing Petitioner's counsel, that based on the liquidation report, Petitioner's deposit for Sheriff's Fees has a deficiency amounting to ₱2,500.00 which must be paid within ten (10) days from notice.[7]

On July 2, 2019, the Court issued a Resolution[8] ordering Petitioner to show cause why it should not be cited in contempt for failure to comply with the January 4, 2019 Order of the Court.

On July 26, 2019, Petitioner filed its Compliance[9] containing its apologies to the Court for its inadvertence and its proof of payment of the deficiency deposit. This was noted by the Court in a Minute Resolution dated July 29, 2019.[10]

Meanwhile, upon Petitioner's request, a hearing on the motion for reconsideration was originally scheduled on June 11, 2019,[11] however, the same was cancelled and moved to September 11, 2019.[12]

During the hearing on September 11, 2019, Petitioner's counsel presented the envelope containing the Decision of the Bureau of Customs (BOC) sent to Petitioner and manifested that it is a faithful reproduction of the one found on page 276 of the records of the case. Petitioner's Motion for Reconsideration was then submitted for resolution.[13]

On October 24, 2019, the Court issued a Resolution[14] requiring Petitioner to submit its Supplemental Formal Offer of Evidence, to include exhibits marked during the hearing, for the proper consideration of the Court and holding in abeyance the resolution of Petitioner's motion.

On November 8, 2019, Petitioner filed its Formal Offer of Evidence[15] (FOE) which the Court noted in the Minute Resolution dated November 11, 2019.[16]

On February 4, 2020, the Court issued a Resolution[17] requiring Respondent to comment on Petitioner's Supplemental FOE within ten (10)

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[6] *Id.*, p. 284.
[7] *Id.*, pp. 285-288.
[8] *Id.*, pp. 291-292.
[9] *Id.*, pp. 293-295.
[10] *Id.*, p. 296.
[11] *Id.*, pp. 282-283.
[12] *Id.*, p. 289.
[13] *Id.*, p. 297.
[14] *Id.*, pp. 306-307.
[15] *Id.*, pp. 308-309.
[16] *Id.*, p. 310.

days from notice. Likewise, the resolution of Petitioner's motion for reconsideration was held in abeyance.

On February 24, 2020, Respondent filed his Comment[18] through registered mail which the Court received on March 2, 2020.

In a Resolution[19] dated June 2, 2020, the Court admitted Petitioner's Exhibits "C" and "C-1" and Petitioner's Motion for Reconsideration was submitted for resolution.

THE ARGUMENTS OF THE PARTIES

Petitioner argues that the August 19, 2015 date that it alleged as the date of its receipt of the Respondent's Decision in its Petition for Review, Pre-Trial Brief, Joint Stipulation of Facts and Issues, as well as the Pre-Trial Order were all mistakes that it committed inadvertently. It urges the Court to excuse the technical lapse, reverse the Decision dismissing the case and to decide the case on the merits to abort a grave injustice inflicted on it.

On the other hand, Respondent claims that the additional exhibits presented by Petitioner could have been discovered and produced during trial with reasonable diligence which Petitioner failed to do. Furthermore, the additional exhibits only show that one copy of the BOC Decision was dispatched on August 19, 2015 which does not exclude the possibility of Respondent receiving other copies thereof on August 19, 2015 as alleged by Petitioner in its Petition for Review, which the contents thereof were certified as true and correct by Leslie Michelle Lacson, its General Manager. Petitioner could not also explain the fixation on the August 19, 2015 date as no significant event happened on that date and claiming it is merely a typographical error is unlikely as 19 could not be mistyped as 25.

THE RULING OF THE COURT

Petitioner's arguments are well-taken.

Substantive Justice is Better Served by Giving the Petition Due Course

Most recently, the Supreme Court, in the case of *Kabalikat Para sa Maunlad na Buhay, Inc. v. Commisioner of Internal Revenue*,[20] elucidated bench and

[17] *Id.*, p. 312.
[18] *Id.*, pp. 313-317.
[19] *Id.*, p. 320.
[20] G.R. Nos. 217530-31, 217536-37 & 217802, February 10, 2020.

bar on the weight the strict application of procedural rules has *vis a vis* substantive justice. Salient portions of the Decision are quoted hereunder, thus:

> "Verily, it is settled that 'procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.'[21] However, it is not novel for courts to brush aside technicalities in the interest of substantial justice. Notably, in *Malixi v. Baltazar,*[22] the Court recounted the long line of jurisprudence[23] consistently supporting the relaxation of procedural rules if strict adherence thereto would only frustrate rather than promote justice.
>
> While the Court has entertained petitions in the past despite the presence of procedural lapses, the Court has restricted its liberality only to exceptional circumstances. To warrant relaxation of the rules, the erring party must: (a) show reasonable cause justifying its noncompliance with the rules,[24] (b) convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice,[25] and (c) offer proof of at least a reasonable attempt at compliance there with.[26] 'The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse.'[27]"

In *Kabalikat,* the Supreme Court found that both parties offered reasons to justify their respective procedural flaws which were, failure to aver a "concise and direct statement of complete facts" and attach "either clearly legible duplicate originals or certified true copies" of the issuances assailed, on the part of Kabalikat, and failure to attach the requisite verification, on the part of the CIR. The deficiencies, however, were subsequently rectified by both parties.

Similar to the situation obtaining *Kabalikat,* Petitioner has sufficiently convinced this Court that the "August 19, 2015" date repeatedly mentioned in its Petition for Review, Pre-Trial Brief, Joint Stipulation of Facts and Issues, as well as the Pre-Trial Order is a mere reiteration of a typographical error it committed in its Petition.

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[21] *Id.* citing *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 962 (2015), citing *Anderson v. Ho*, 701 Phil. 6 (2013).
[22] *Id.* at 20, citing G.R. No. 208224, November 22, 2017, 846 SCRA 244.
[23] *Id.* citing *Acaylar.Jr. v. Harayo*, 582 Phil. 600 (2008); *Barroga v. Data Center College of the Phils., et al.*, 667 Phil. 808 (2011); *Paras v. Judge Baldado*, 406 Phil. 589 (2001); *Durban Aparments Corporation v. Catacutan*, 514 Phil. 187 (2005); *Manila Electric Company v. Gala*, 683 Phil. 356 (2012); *Doble v. ABB, Inc./Nitin Desai*, 810 Phil. 210 (2017); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639 (2014); *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264 (2014).
[24] *Id.* citing *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 465, citing *Daikoku Electronics Phils., Inc. v. Raza*, 606 Phil. 786, 803-804 (2009).
[25] *Id.*
[26] *Id.* citing *Anderson v. Ho*, 701 Phil. 6, 18 (2013), citing *Mediserv, Inc. v. CA (Special Former 13th Division), et al.*, 631 Phil. 282, 295 (2010).
[27] *Supra* note 24.

Petitioner's Exhibits "C" and "C-1" which is an original envelope containing the Decision of the Commissioner of Customs (COC) show that the Decision was mailed by the BOC in the Central Post Office of Manila on August 19, 2015, and that this very same registered mail matter was dispatched by the Central Post Office of Manila and served to Petitioner on August 25, 2015.

Even the BOC Records certified and elevated to this Court by Respondent confirms this. In a Notice sent by the BOC, Manila International Container Port, to Petitioner informing the latter of the COC's Decision, it indicates "August 19, 2015" as the date it was registered with the Receiving Unit of the Central Post Office. There is likewise an indication that the same was received by a certain Rainier B. Vicente on "August 26, 2015".

All these point to the fact that the Decision could not have been received by Petitioner on August 19, 2015. The Court gives credence to Petitioner's averment in its Petition for Review that the Decision was indeed received on August 25, 2015, making its Petition for Review timely filed.

As the Supreme Court exhorts in *Kabalikat*:

> "To be sure, the formal and procedural lapses in the present case should not have rendered the parties' respective appeals fatally defective. The court *a quo's* insistence on a strict implementation of these technicalities is unjust, especially when 'the more prudent course of action would have been to afford petitioners time' to remedy their oversight -- which they already have -- instead of using these mistakes to justify 'dispossessing petitioners of relief.'[28]"

Given the foregoing, Petitioner's Motion for Reconsideration is **GRANTED** and its Petition for Review is hereby **GIVEN DUE COURSE**.

The Arguments of the Parties: A Recap

Prior to ascertaining the merit of the instant Petition, a recap of the arguments of the parties is called for, as recounted in the original Decision.

Petitioner argues that with respect to quantitative import restrictions on rice, aside from Republic Act (RA) No. 8178, otherwise known as the "Agricultural Tariffication Act", and NFA Memorandum Circular No. AO-

[28] *Id.* at Note 20, citing *Cortal, et al. v. Inaki A. Larrazabal Enterprises, et. al.*, 817 Phil. 464, 493 (2017).

2K13-003, the provisions of the *World Trade Organization Agreement* (WTO Agreement) are also relevant. The Philippines, being a signatory to the *General Agreement on Tariffs and Trade* (GATT-WTO) is bound to observe and respect its international obligations under the GATT-WTO. Specifically, the Philippines is bound to comply with Part III, Article 4 of the Agreement of Agriculture (GATT) which provides that members shall not maintain, resort to, or revert to any measures of the kind (referring to quantitative import restrictions, discretionary import licensing, etc.) which must be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.

Furthermore, while the Philippines was granted the privilege to impose quantitative restrictions (QR) on rice from 1995 to 2005, which was thereafter extended until June 30, 2012, after negotiations, the Philippines was bound to convert the quantitative restrictions to ordinary customs duties with respect to rice importations after that date. The Philippines cannot invoke RA 8178 to justify its refusal to tarrify rice and National Food Administration (NFA) Circular No. AO-2K13-003 is null and void for being ultra vires since it was issued after June 30, 2012 and before July 24, 2014 when the Philippine government was granted another extension on its special treatment of rice until June 30, 2017.

As the subject shipment was covered by an import permit, Petitioner argues that, contrary to the assailed Decision of the COC, the excess rice shipment is not "undeclared", but merely "misdeclared" as to quantity which merits, at most, the imposition of a surcharge but not seizure.

On the other hand, Respondent argues that: 1) since the subject containers of rice are in excess of the quantity allowed in its import permit and beyond the rice allocation authorized by the NFA, it is a prohibited importation liable for forfeiture under Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP); 2) under Section 2 of RA 8178, an import permit is required prior to the importation of rice; 3) Section 4 of Memorandum Circular (MC) No. AO-2K13-003 required rice importers to secure import permits from the NFA for all rice importations; and, lastly, 5) Petitioner's attempt to import the excess bags of rice despite the knowledge of the limitation of the number of bags it is allowed to import under its import permit should be construed as intent to evade payment of duties due and demandable.

Rice Importations Not Illegal and Subject to Forfeiture; Merely Subject to Ordinary Customs Duties & Surcharge

At the outset, it must be said that the issue in this case is not novel. This Court has had occasion to discuss at length how the Philippines' treaty obligations under the GATT-WTO interplays with RA 8178 and NFA Circular

No. AO-2K13-003, and its effect on a taxpayer whose excess importations of rice were made during the interim between the expiration of the country's special treatment of rice in June 30, 2012 and the grant of an extension thereof on July 24, 2014.

In *Jade Bros Farm and Livestock, Inc. vs. Bureau of Customs and the Commissioner of Customs*[29], this Court recounted the history of the Philippines' formal accession to the GATT-WTO and its obligations as a member-state, more specifically, under the *WTO Agreement on Agriculture*, thus:

> On October 30, 1947, the *General Agreement on Tariffs and Trade ("GATT")* was signed by 23 nations[30], but was not until January 1, 1948 when it entered into force. It contained tariff concessions agreed to in the first multilateral trade negotiations and a set of rules designed to prevent these concessions from being frustrated by restrictive trade measures.[31]
>
> At first, GATT was a collection of treaties governing access to the economies of treaty adherents with no institutionalized body administering the agreements or dependable system of dispute settlement.[32] The Philippines became a member thereof, or a "GATT contracting party," on December 27, 1979.[33]
>
> After rounds of negotiations, in 1994, the WTO was established as the administering body of the GATT, with the signing of the *Final Act* and the ratification of the WTO *Agreement* by its members.[34] On April 15, 1994, a Philippine representative signed the *Final Act Embodying the Results of the Uruguay Round of Multilateral Negotiations ("Final Act")*.[35] As a result, WTO replaced the GATT (as a body), and upon signing the new WTO *Agreements*, the members officially became known as "WTO members."[36]
>
> **The *Final Act* (or the "WTO *Agreement*") includes the updated the *1994 GATT*, the <u>WTO *Agreement on Agriculture*</u>, and other agreements.** It was concurred to by

[29] CTA Case No. 8886, September 21, 2016.
[30] *Id.* citing *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.
[31] *Id.*
[32] *Id.*
[33] *Id.* citing https://www.wto.org/english/thewto_e/gattmem_e.htm; last accessed: September 7, 2016.
[34] *Id.* at Note 30.
[35] *Id.*
[36] *Id.* citing https://www.wto.org/english/thewto_e/gattmem_e.htm; last accessed: September 7, 2016.

congress, as provided in its *Senate Resolution No. 97* dated December 14, 1994.[37]

Article XI of the 1994 GATT requires the general elimination of QRs; while *Article XIII of the 1994 GATT* requires non-discriminatory application of such restrictions.[38] Hence, as a general rule, no QRs are allowed to be imposed by any WTO member.

However, *Article 15 of the WTO Agreement on Agriculture (on Special and Differential Treatment)* provides that developing country members, like the Philippines, shall have the flexibility to implement reduction commitments over a period of up to ten (10) years. Any extension of the Special Treatment can be negotiated, pursuant to *Section B(8) of Annex 5: Special Treatment with Respect to Paragraph* 2 *of Article* 4, *WTO Agreement on Agriculture.* In effect, this Special Treatment temporarily permitted the Philippines to impose QRs on the importation of rice from the years 1995 to 2005.

To implement the *WTO Agreement,* on March 28, 1996, *RA No. 8178,* otherwise known as the *"Agricultural Tariffication Act"* was approved, amending *Presidential Decree ("PD") No.* 4. *RA No. 8178.* It provides that an importer like petitioner must first secure an import permit from the NFA before importing rice.

In 2006, pursuant to *Article* 4.2 *and Section B of Annex* 5 *of the Agreement,* the Philippines' Special Treatment for rice was extended from July 1, 2005 to June 30, 2012.[39] <u>Hence, from July 1, 2012 until July 24, 2014, no Special Treatment of rice was in place under treaty</u>.

However, on March 22, 2013, the NFA issued the *NFA Memorandum Circular* providing that rice importers are required to procure rice permits prior to the importation of rice, **essentially imposing QRs on rice**.

[37] *Id.* at Note 30.
[38] *Id.* citing https://www.wto.org/english/tratop_e/markacc_e /qr_e.htm; last accessed: September 8, 2016.
[39] *Id.* citing Rectification and Modification of Schedule LXXV - Republic of the Philippines contained in the WTO documents G/MA/TAR/RS/99/Rev.1 dated 27September 2006 and WT/Let/562 on 08 February 2007.

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It is clear, and in fact vigorously argued by respondent COC, that under PD *No. 4, as amended by RA No. 8178,* the NFA shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels.

Section 5 of RA No. 8178 further grants the NFA the power to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.

From the foregoing provisions of the law, **respondent COC declared petitioner's importations as illegal because of the absence of an import permit from the NFA**, citing *Section 2530(f) of the TCCP,* which states that "any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

However, *PD No. 4* and *RA No. 8178,* relied upon by respondent COC for his classification of petitioner's rice shipments, must be read in relation to the *WTO Agreement.* As a matter of fact, the obligations of the Philippines under the *WTO Agreement* is expressly referenced in *Section 6(a) of PD No. 4,* as amended by *RA No. 8178,* to wit:

> Sec. 6. (a) *Powers.* –
>
> x x x x x x x x x
>
> (xii) to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.
>
> In the exercise of this power, the Council after consultation with the Office of the President

> shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: *Provided*, That this requirement shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO. The Authority shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government.[40]

The *WTO Agreement* became part of Philippine laws through the Incorporation clause and the Treaty Clauses.[41]

The Incorporation Clause is found in *Section* 2, *Article II of the 1987 Philippine Constitution,* which states that "[t]he Philippines... adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws.[42]

The Treaty Clause can be found in *Section 21, Article VII of the 1987 Philippine Constitution,* which reads: "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." Hence, once a treaty has been concurred to by two-thirds (2/3) of all the Members of the Senate, it automatically forms part of the law of the land and is treated as a domestic law.[43]

The ratification by the President and the Philippine Senate of the *WTO Agreement* is an official and constitutional act, which incorporated the agreements composing the *WTO Agreement* as part of our local

[40] Underscoring in the original
[41] *Id.* at Note 30, citing Records, Vol. 3, p. 1263.
[42] *Id.*
[43] *Id.* at Note 41, pp. 1263-1264.

legislation. Hence, following the Treaty Clause, the *WTO Agreement* became domestic law on December 14, 1994.[44]

In fact, the pronouncement that the *WTO Agreement* forms part of the law of the land, is a settled precept declared by the SC in the case of *Tañada v. Angara*[45]:

> The WTO Agreement provides that'(e)ach Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.' xxx
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> x x x x x x x x x
>
> xxx Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda*- international agreements must be performed in good faith." xxx

Moreover, the SC also ruled in the case of the *Secretary of Justice v. Lantion*[46] that under the Incorporation Clause, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere.

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It cannot be denied, as well, that import permits issued by the NFA, and required by respondent COC, are

[44] *Id.*, p. 1264.
[45] *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.
[46] G.R. No. 139465, January 18, 2000, 322 SCRA 160.

quantitative import restrictions, under *Section 3(f) of RA No. 8178:*

> (f) "Quantitative Import Restrictions" refers to non-tariff restrictions used to limit the amount of imported commodities, including but not limited to discretionary import licensing and import quotas, whether qualified or absolute.[47]

While WTO member countries like the Philippines are prohibited from imposing QRs on imported products, a Special Treatment is accorded to certain countries, allowing them to impose discretionary import licensing as a matter of exception to the rule. This Special Treatment is found in *Annex 5 of the Agreement on Agriculture:*

> *Annex 5: Special Treatment with Respect to Paragraph* 2 *of Article 4*
>
> *Section A*
>
> 1. The provisions of paragraph 2 of Article 4 shall not apply with effect from the entry into force of the WTO Agreement to any primary agricultural product and its worked and/ or prepared products ("designated products") in respect of which the following conditions are complied with (hereinafter referred to as "special treatment"):
>
> (a) imports of the designated products comprised less than 3 per cent of corresponding domestic consumption in the base period 1986-1988 ("the base period");
>
> (b) no export subsidies have been provided since the beginning of the base period for the designated products;
>
> (c) effective production-restricting measures are applied to the primary agricultural product;
>
> (d) such products are designated with the symbol

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[47] *Id.* at Note 29; underscoring in the original.

"ST-Annex 5" in Section 1-B of Part I of a Member's Schedule annexed to the Marrakesh Protocol, as being subject to special treatment reflecting factors of non-trade concerns, such as food security and environmental protection; and

(e) minimum access opportunities in respect of the designated products correspond, as specified in Section 1-B of Part I of the Schedule of the Member concerned, to 4 per cent of base period domestic consumption of the designated products from the beginning of the first year of the implementation period and, thereafter, are increased by 0.8 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period.

2. At the beginning of any year of the implementation period a Member may cease to apply special treatment in respect of the designated products by complying with the provisions of paragraph 6. In such a case, the Member concerned shall maintain the minimum access opportunities already in effect at such time and increase the minimum access opportunities by 0.4 per cent of corresponding domestic consumption in the base period per year for the remainder of the implementation period. Thereafter, the level of minimum access opportunities resulting from this formula in the final year of the implementation period shall be maintained in the Schedule of the Member concerned.

3. <u>Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 1 after the end of the implementation period shall be completed within the time-frame of the implementation period itself as a part of the negotiations set out in Article 20 of this Agreement, taking into account the factors of non-trade concerns.</u>

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> 8. Any negotiation on the question of whether there can be a continuation of the special treatment as set out in paragraph 7 after the end of the 10th year following the beginning of the implementation period shall be initiated and completed within the time-frame of the 10th year itself following the beginning of the implementation period.[48]

By way of exception, the Philippines applied for and was allowed to enjoy this Special Treatment from the years 1995 to 2005, or for ten (10) years, and a further extension of seven (7) years until June 30, 2012. **Before the expiration of the Special Treatment on June 30, 2012, the Philippines requested for another extension. However, the extension was granted only on July 24, 2014 through a *Waiver Decision*.**

As aptly stated in *page 8 of the* DOJ *Opinion:*

> 3. Under Annex 5, the "special treatment", which effectively allows for the imposition of QRs, in derogation of the general provision under Paragraph 2, Article 4, was never intended to be effective permanently or for an indefinite period of time. In fact, by the terms of Annex 5, the special treatment shall only be effected during the implementation period (in relation to paragraph 1) or within a ten-year period following the start of the implementation period (in relation to paragraph 7).
>
> 4. Thereafter, its continued application shall be subject of negotiations, which will be completed within the time frame of the implementation period itself as part of the negotiations set our in Article 20 of the Agreement (with respect to special treatment under Paragraph 1), or within the time-frame of the 10th year itself following the beginning of the implementation period (with respect to [the] special treatment under Paragraph 7).[49]

Therefore, **during the period of June 30, 2012 up to July 24, 2014, the Philippines did not enjoy any Special Treatment**

[48] *Id.*
[49] *Id.*

under *Annex* 5 *of the WTO Agreement on Agriculture*. Hence, the following provisions of *Annex* 5 take operative effect, given the absence of the grant of any Special Treatment in favor of the Philippines:

> *Annex 5: Special Treatment with Respect to Paragraph 2 of Article 4*
>
> *Section A*
>
> x x x x x x x x x
>
> 5. Where the special treatment is not to be continued at the end of the implementation period, the Member concerned shall implement the provisions of paragraph 6. In such a case, after the end of the implementation period the minimum access opportunities for the designated products shall be maintained at the level of 8 per cent of corresponding domestic consumption in the base period in the Schedule of the Member concerned.
>
> 6. Border measures other than ordinary customs duties maintained in respect of the designated products shall become subject to the provisions of paragraph 2 of Article 4 with effect from the beginning of the year in which the special treatment ceases to apply. **Such products shall be subject to ordinary customs duties,** which shall be bound in the Schedule of the Member concerned and applied, from the beginning of the year in which special treatment ceases and thereafter, at such rates as would have been applicable had a reduction of at least 15 per cent been implemented over the implementation period in equal annual installments. These duties shall be established on the basis of tariff equivalents to be calculated in accordance with the guidelines prescribed in the attachment hereto.
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> 10. In the event that the special treatment under paragraph 7 is not to be continued beyond the 10th year following the beginning of the implementation period, the products concerned shall be subject to ordinary customs duties, established on the basis of a tariff equivalent to be calculated in accordance with the guidelines prescribed in the

> attachment hereto, which shall be bound in the Schedule of the Member concerned. In other respects, the provisions of paragraph 6 shall apply as modified by the relevant special and differential treatment accorded to developing country Members under this Agreement.[50]

To reiterate, *Paragraph 2, Article 4 of the WTO Agreement on Agriculture* states that "members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5."

This only means that the NFA could not legally require petitioner to secure an import permit for its importations made on November 2013.

As between the *WTO Agreement* entered into by the Philippines and became part of domestic law as early as 1994, and the *NFA Memorandum Circular* of 2013, there is no dispute that in case of discrepancy between the former (the basic law) and the latter (the rules and regulations implementing the said basic law), the former prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[51]

Similar to the facts obtaining in the *Jade Bros* case, the rice importations of Petitioner in the instant case occurred on **November 26, 2013**. This means that the importations were made after the Special Treatment expired on June 30, 2012, after the passing of the *NFA Memorandum Circular*, and before the *Waiver Decision* was afforded to the Philippines.

Respondent COC justifies the seizure, detention, and auction of Petitioner's rice shipments on the purported illegality thereof, on account of the absence of import permits from the NFA, citing Section 2530(f) of the TCCP. However, in view of the discussion above as regards the applicability of the Special Treatment provisions of the *WTO Agreement* during that time, it is apparent that at the time Petitioner imported the rice shipments, there was no need to secure an import permit from the NFA.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **GRANTED** and its Petition for Review is **GIVEN DUE**

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[50] Underscoring ours.
[51] *Hija Plantation, Inc. v. Central Bank*, G.R. No. L-34526, August 9, 1988, 164 SCRA 192.

COURSE. The dispositive portion of the Decision dated August 31, 2018 is hereby **AMENDED** to read, as follows:

> "**WHEREFORE,** the instant Petition for Review is **GRANTED.** The Decision of the Commissioner of Customs dated August 12, 2015 anent Petitioner's rice shipment, covered by Bill of Lading No. EGLV050300766382A is hereby **REVERSED and SET ASIDE.** Considering that Petitioner's rice shipments have already been auctioned, Respondents are hereby **ORDERED TO RELEASE** to Petitioner, the proceeds of the auction sale held last January 21, 2015 in the amount of ₱2,693,000.00, which are presently held in trust by Respondents, less the applicable ordinary duties, taxes, penalties, government fees and assessments, that may be assessed over the subject importation.
>
> **SO ORDERED.**"

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice