REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AMIRA C FOODS INTERNATIONAL DMCC, Petitioner,	**CTA CASE NO. 8557**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
REPUBLIC OF THE PHILIPPINES, Respondent.	Promulgated: JUL 18 2019 ; 10:40 a.m.

x - x

DECISION

DEL ROSARIO, P.J.:

This pertains to the Petition for Review (with Urgent *Ex Parte* Application for the Issuance of Temporary Restraining Order and/or Preliminary Injunction)[1] filed on October 16, 2012 by Amira C Foods International DMCC (*petitioner*) against the Republic of the Philippines (*respondent*) under Section 4(a), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA).[2]

Petitioner seeks the reversal and setting aside of the September 11, 2012 Decision[3] rendered by the Commissioner of Customs (*COC*) in Customs Case No. 2012-013, which affirmed the undated Decision of the District Collector of the Port of Subic in

---

[1] CTA Docket Vol. I, pp.7-351 (*inclusive of annexes*).

[2] SEC. 4. *Where to appeal, mode of appeal.*- (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, **the decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, **shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court**. The Court in Division shall act on the appeal.

[3] Annex "A" of the Petition for Review, CTA Docket Vol. I, pp. 89-113.

Seizure Identification No. 2012-005, ordering the forfeiture of the shipment of 420,000 bags of Indian White Rice consigned to Metro Eastern Trading Corporation in favor of the government to be disposed of in accordance with law.[4]

THE PARTIES

Petitioner is a foreign company registered in the Dubai Freeport Zone Register under Registration No. DMCC2178, with address at Unit No. 3O-01-48, Floor No. 1 Building No. 3, Plot No. 550-554, J&G, DMCC, Dubai. Petitioner is not doing business in the Philippines, and is suing on an isolated incident involving its property. It is represented by its duly authorized representative, Mr. Saumit Ghosh, whose authority is shown in the Director's Certificate[5] dated October 10, 2012.[6]

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

THE FACTS

On November 16, 2011, Amira Foods (India) Limited (*Amira Foods)*, a corporation organized and existing under Indian Laws, and Perum Bulog, an Indonesian state-owned enterprise organized and existing under Indonesian laws, executed a Sales and Purchase Contract No. PK/IP-005/DO200/11/2011 (*Sales and Purchase Contract*)[7] for 100,000 metric tons of Indian long grain white rice (*Indian White Rice*) to be delivered from December 2011 to February 15, 2012 to various ports of discharge in Indonesia:[8]

Pursuant to the Sales and Purchase Contract, Amira Foods chartered six (6) vessels to deliver the Indian White Rice. One of these vessels was MV Vinalines Mighty which was bound for the port of Tanjung Priok, Jakarta, Indonesia.[9]

---

[4] Annex "A" of the Petition for Review, CTA Docket Vol. I, p. 89.
[5] Annex "B" of the Petition for Review, CTA Docket Vol. I, p. 114
[6] Par. 3.1, Petition for Review, CTA Docket Vol. I, pp. 9-10.
[7] Exhibits "P-2", "P-2-a" and "P-2-a", CTA Docket Vol. III, pp. 1372-1406.
[8] Exhibits "P-2", "P-2-a" and "P-2-a", CTA Docket Vol. III, pp. 1372-1406.
[9] Exhibit "P-3"", CTA Docket Vol. III, pp. 1407-1413.

On January 31, 2012, MV Vinalines Mighty arrived at the Port of Kandla, India, to load 21,000 metric tons of Indian White Rice.[10] On February 14, 2012, the loading of the Indian White Rice packed in 420,000 polypropylene bags of 50 kilograms each and marked "Bulog" commenced.[11] The 420,000 bags of Indian White Rice were consigned to the order of Bank Rakyat Indonesia, with Perum Bulog as the designated party to be notified.[12]

On February 24, 2012, the loading of the Indian White Rice on MV Vinalines Mighty was completed.[13] On even date, the Custom House Kandla issued Port Clearance Certificate No. F-1729.[14]

On February 25, 2012, MV Vinalines Mighty left the Port of Kandla, India bound for Tanjung Priok, Jakarta, Indonesia.[15]

On March 8, 2012, MV Vinalines Mighty arrived off the waters of Jakarta, Indonesia.[16] Despite its readiness to discharge the rice cargo, MV Vinalines Mighty was unable to do so[17] as Perum Bulog rejected its tender of readiness to discharge on account of the "limitations given from Indonesian Government."[18]

With Perum Bulog's rejection of MV Vinalines Mighty's tender to discharge its cargo, MV Vinalines Mighty was forced to stay in Indonesian Waters from March 8 to 27, 2012.[19] During that period, MV Vinalines Mighty was "at anchorage" and "did not discharge any cargo".[20] While MV Vinalines Mighty was anchored in Indonesian waters, petitioner was incurring demurrage expenses at the rate of USD5,000.00 per day.[21]

---

[10] Exhibit "P-4", CTA Docket Vol. III, pp. 1414-1420.
[11] Exhibit "P-4", CTA Docket Vol. III, pp. 1414-1420; Par. 1, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[12] Exhibit "P-4", CTA Docket Vol. III, pp. 1414-1420.
[13] Exhibit "P-4", CTA Docket Vol. III, pp.1414-1420; Par. 1, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[14] Exhibit "P-6", CTA Docket Vol. III, p. 1425.
[15] Exhibits "P-4" and "P-5", CTA Docket Vol. III, pp. 1414-1424.
[16] Exhibit "P-24", CTA Docket Vol. III, p. 1511; Exhibit "P-26", CTA Docket Vol. III, pp. 1520-1522.
[17] Exhibit "P-26", CTA Docket Vol. III, pp. 1520-1522.
[18] Exhibit "P-25", CTA Docket Vol. III, pp. 1512-1515.
[19] Exhibit "P-26", CTA Docket Vol. III, pp. 1520-1522.
[20] Exhibit "P-26", CTA Docket Vol. III, pp. 1520-1522.
[21] Exhibit "P-3", CTA Vol. III, pp. 1407-1413; Exhibits "P-86-40" and "P-86-41", CTA Docket Vol. II, pp. 961-962.

On March 20, 2012, Amira Foods entered into a "high sea sale" of the Indian White Rice with petitioner, its wholly-owned subsidiary.[22]

Due to Perum Bulog's rejection as well as the continued accumulation of demurrage fees, Amira Foods explored several business options "to temporarily unload xxx at a freeport," as a transshipment port. The use of a temporary storage facility provided by a free port was considered by Amira Foods before it could transship the goods to a final destination to minimize its loses. The freeports in the Philippines and Singapore were considered. Since Singapore appeared to be more expensive, Subic Bay Port was chosen as the transshipment port.[23]

Amira Foods initially sought the assistance of Container Bridge, a Manila-based logistics support company and clearing agent,[24] to assist petitioner in the transshipment and temporary storage of the rice cargo within the Subic Bay Freeport Zone (SBFZ).[25]

On April 4, 2012, MV Vinalines Mighty, carrying the subject Indian White Rice, reached Grande Island in the SBFZ.[26] On the same day, Domingo M. Mendoza, Jr., Boarding Officer, Port of Subic, conducted the Boarding Inspection and Formalities, after which, a General Permit was issued by the Board Officer to discharge the subject rice in the Subic Special Economic Zone (SSEZ).[27]

On April 5, 2012, discharging of the subject rice commenced and completed on April 20, 2012.[28]

Upon unloading, the subject rice was stored inside two (2) Subic Bay Metropolitan Authority (SBMA) – managed warehouses within the SSEZ.[29]

On April 16, 2012, Major Elpidio Jose R. Manuel, District Commander, Customs Police Division – Enforcement and Security Service (CPD-ESS), BOC, requested Atty. Redentor S. Tuazon, OIC,

---

[22] Exhibit "P-76-15", CTA Docket Vol. III, p.1619 and Exhibit "P-86-57", CTA Docket Vol. II, pp. 977-978.
[23] Exhibits "P-86-40" to "P-86-47", CTA Docket Vol. II, pp. 961-968.
[24] Exhibit "P-86-45", CTA Docket Vol. II, p. 966.
[25] Exhibit "P-86-46", CTA Docket Vol. II, p. 967.
[26] Par. 2, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[27] Par. 3, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[28] Par. 4, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[29] Par. 5, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.

Senior Deputy Administrator for Operations, SBFZ, for copy of pertinent documents anent the subject rice.[30] On even date, Atty. Tuazon replied to the request of Major Manuel and stated that "no admission entry has yet been filed by the consignee (Metro Eastern Trading Corporation) of the said shipment since upon their representation the issuance of their allocation permit from the National Food Authority (NFA) is still in progress.[31]

Major Manuel also inquired in a letter to the Administrator of NFA whether the shipment was covered by any authority issued by the NFA.[32] On April 18, 2012, Angelito T. Banayo, Administrator, NFA, replied that *"[a]fter verifying through with our records, Metro Eastern has not participated in any of NFA's open rice importation under the Private Sector-Financed Importation and Farmer's Organizations rice importation for 2012. Henceforth, we are disavowing any knowledge on the said rice importation."*[33]

On May 15, 2012, the District Collector of the Port of Subic issued a Warrant of Seizure and Detention (WSD) against the 420,000 bags of Indian White Rice for **possible violation of Section 2530 (e), (f) and (l) of the Tariff and Customs Code of the Philippines, as amended**.[34]

On May 18, 2012, in a Return of Service of WSD, Major Manuel informed the District Collector of Subic that the WSD has been duly served and received by Mr. Cesar P. Bulaon, Manager, Metro Eastern.[35]

On June 15, 2012,[36] petitioner received the undated Decision of the District Collector of Subic ordering the forfeiture of the subject shipment, to wit:[37]

> "**WHEREFORE**, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the shipment consisting of 420,000 bags of Indian White Rice consigned to Metroeastern (*sic*) Trading Corporation be **FORFEITED** in favor of the government to be disposed of in the manner provided for by law.

---

[30] Par. 6, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[31] Par. 7, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[32] Par. 8, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149.
[33] Par, 9, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.
[34] Par. 10, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.
[35] Par. 11, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.
[36] Par. 29, Memorandum dated July 30, 2018, CTA Docket Vol. IV, p. 2107.
[37] Par. 12, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.

> Let copies of this Decision be furnished [to] all parties and offices for information and guidance.
>
> **SO ORDERED.**"[38]

On June 19, 2012, petitioner appealed to the COC the undated Decision of the District Collector of Subic.[39]

On September 11, 2012, the COC rendered the assailed Decision, affirming the forfeiture of shipment of Indian White Rice, to wit:

> "**WHEREFORE**, premises considered, the undated Decision of the District Collector, Port of Subic, ordering the forfeiture of the shipment of 420,000 bags of Indian White Rice consigned to Metroeastern (*sic*) Trading Corporation in favor of the government to be disposed of in accordance with law, is hereby **AFFIRMED** and the instant appeal is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"[40]

Aggrieved, petitioner filed the present Petition before the Court on October 16, 2012.

On October 17, 2012, respondent proceeded with the sale of petitioner's goods by public auction.[41] The full amount of ₱487,200,000.00[42] representing the bid price for petitioner's goods was received by respondent[43] and placed under Special Account No. 1571-0589-83, Land Bank of the Philippines, Freeport Zone (SBFZ) Branch.[44]

From the time of their unloading and even up to the time of the sale of the goods, petitioner did not remove from the SSEZ warehouses a single sack of rice.[45]

On October 22, 2012,[46] the parties were heard on petitioner's Urgent *Ex Parte* Application for the Issuance of Temporary

---

[38] Annex "A" of the Petition for Review, CTA Docket Vol. I, p. 89.
[39] Annex "A" of the Petition for Review, CTA Docket Vol. I, p. 96.
[40] Annex "A" of the Petition for Review, CTA Docket Vol. I, p. 113.
[41] Par. 14, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.
[42] Par. 1, Answer to Request for Admission, CTA Docket Vol. I, p. 504.
[43] Par. 17, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.
[44] Par. 18, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1151.
[45] Par. 16, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1150.

Restraining Order and/or Preliminary Injunction. During the hearing, petitioner manifested that the auction sale sought to be enjoined or restrained was already conducted by respondent on October 17, 2012 and moved to be allowed to file an amended Petition for Review to include the supervening facts of its case and for respondent to provide petitioner the necessary information it needs in preparing the amended Petition for Review. The Court granted petitioner's motion and ordered *(i)* petitioner to file a written request for the necessary information needed; *(ii)* respondent to file a written statement providing details of the information sought within five (5) days; and, (iii) petitioner to file the Amended Petition for Review within ten (10) days.

On October 25, 2012, petitioner filed a Manifestation with Request for Admission[47] seeking confirmation of matters relating to the auction sale conducted by respondent.

To expedite the proceedings, on November 22, 2012, petitioner filed a Manifestation and Motion (To Withdraw Prayer for Temporary Restraining Order and/or Preliminary Injunction) in view of the auction sale of the subject 21,000 metric tons of Indian White Rice conducted by respondent.[48]

In the Resolution dated November 29, 2012,[49] the Court granted petitioner's motion to withdraw its prayer for issuance of a temporary restraining order and/or preliminary injunction.

On January 7, 2013, within the extended period,[50] respondent filed its Answer.[51] On January 18, 2013, petitioner filed a Motion to Admit Attached Reply,[52] which the Court granted in the Resolution dated February 6, 2013.[53]

On January 28, 2013, within the extended period,[54] respondent filed its Answer to Request for Admission.[55]

---

[46] Minutes of the Hearing on October 22, 2012, CTA Docket Vol. I, pp. 360-361.
[47] CTA Docket Vol. I, pp. 361-366.
[48] CTA Docket Vol. I, pp. 409-414.
[49] CTA Docket Vol. I, p. 421.
[50] Order dated December 18, 2012, CTA Docket Vol. I, p. 410.
[51] CTA Docket Vol. I, pp. 447-481.
[52] CTA Docket Vol. I, pp. 512-527.
[53] CTA Docket Vol. I, p. 529.
[54] Order dated January 14, 2013, CTA Docket Vol. I., p. 495.
[55] CTA Docket, Vol. I, pp. 504-511.

On February 8, 2013, petitioner filed its Pre-Trial Brief[56] while respondent filed its Pre-Trial Brief on February 12, 2013.[57]

At the February 14, 2013 hearing, the parties were ordered to file their Joint Stipulation of Facts and Issues and pre-trial was reset to May 27, 2013.[58]

In the Order dated April 2, 2013,[59] the case was transferred to the First Division from the Second Division of the Court in view of the reorganization of the Court's Divisions.

On April 10, 2013, within the extended period,[60] the parties filed their Joint Stipulation of Facts.[61]

In the Resolution dated July 25, 2013, the Court approved the parties' Joint Stipulation of Facts and Issues, terminated the Pre-Trial and directed the issuance of a Pre-Trial Order.[62]

On August 29, 2013, petitioner filed a Manifestation with Motion (To Reopen and To Resolve)[63] praying for the reopening of the Pre-Trial to allow pre-marking and identification of the parties' documentary evidence, as well as to formulate the issues and afford petitioner the opportunity to submit the judicial affidavits of its witnesses.

In the Resolution dated March 4, 2014,[64] the Court granted the reopening of Pre-Trial and set a pre-trial conference on April 25, 2014. On April 25, 2014, Pre-Trial was re-opened and the parties were given until May 28, 2014 to file an amended Joint Stipulation of Facts and Issues.[65]

---

[56] CTA Docket Vol. II, pp. 531-551.
[57] CTA Docket Vol. II, pp. 567-573.
[58] Minutes of the February 14, 2013 Hearing, CTA Docket Vol. II, p. 770.
[59] CTA Docket Vol. II, p. 826.
[60] Order dated March 27, 2013, CTA Docket Vol. II, p. 825.
[61] CTA Docket Vol. II, pp. 827-833.
[62] CTA Docket Vol. II, pp. 888-889.
[63] CTA Docket Vol. II, pp. 890-891.
[64] CTA Docket Vol. II, pp. 917-919.
[65] Minutes of the Hearing on April 25, 2014, CTA Docket Vol. II, pp.1004-1006; Resolution dated April 25, 2014, CTA Docket Vol. II, pp. 1008-1009.

On June 25, 2014, within the extended period,[66] the parties filed their Amended Joint Stipulation of Facts and Issues.[67] The Court approved the same and terminated the Pre-Trial in the Resolution dated July 3, 2014.[68]

On August 7, 2014, the Court promulgated the Pre-Trial Order.[69] On November 6, 2016, however, the Court promulgated an Amended Pre-Trial Order,[70] as prayed for by petitioner[71] and without objection by respondent.[72]

During trial, petitioner presented the following witnesses: (1) Mr. Saumit Ghosh, who testified on direct examination by way of Judicial Affidavit;[73] (2) Mr. Vicente P. Cuevas,[74] who testified on direct examination by way of Judicial Affidavit; (3) Mr. Homayun Kabir Caudary who testified on direct examination by way of Judicial Affidavit[75]; and (4) Mr. Protik Guha, who testified by way of deposition.[76] Petitioner's witnesses were all cross-examined by respondent's counsel.[77] Mr. Kabir further underwent re-direct and re-cross examination by respondent's counsel.[78]

---

[66] Order dated June 13, 2014, CTA Docket Vol. II, p. 1038.
[67] CTA Docket Vol. II, pp. 1039-1049.
[68] CTA Docket Vol. II, p. 1051.
[69] CTA Docket Vol. II, pp.1057-1070.
[70] CTA Docket Vol. III, pp. 1148-1164.
[71] Comment and Manifestation, CTA Docket Vol. II, pp. 1080-1086.
[72] Comment, CTA Docket Vol. II, p. 1117; Resolution dated October 24, 2014, CTA Docket Vol. II, pp, 1135-1136.
[73] Exhibits "P-76" to "P-76-20", CTA Docket Vol. III, pp.1604-1624; Minutes of the July 22, 2014 Hearing, CTA Docket Vol. II, pp.1052-1053; Resolution dated July 22, 2014, CTA Docket Vol. II, p. 1055.
[74] Exhibits "P-77" to "P-77-11", CTA Docket Vol. II, pp. 1093-1104; Minutes of the September 30, 2014 Hearing, CTA Docket Vol. II, pp. 1112-1113; Resolution dated September 30, 2014, CTA Docket Vol. II, pp. 1115-1116.
[75] Exhibit "P-84" to "P-84-I-1", CTA Docket Vol. III, pp. 1183-1195; Minutes of the Hearing on September 22, 2015, CTA Docket Vol. III, pp.1250-1254; Resolution dated September 22, 2015, CTA Docket Vol. III, p. 1257.
[76] Exhibit "P-85 to "P-86-80-a", CTA Docket Vol. II, pp. 921-1001.
[77] Exhibits "P-76" to "P-76-20", CTA Docket Vol. III, pp.1604-1624; Minutes of the July 22, 2014 Hearing, CTA Docket Vol II, pp.1052-1053; Resolution dated July 22, 2014, CTA Docket Vol. II, p. 1055; Exhibits "P-77" to "P-77-11", CTA Docket Vol. II, pp. 1093-1104; Minutes of the September 30, 2014 Hearing, CTA Docket Vol. II, pp. 1112-1113; Resolution dated September 30, 2014, CTA Docket Vol. II, pp. 1115-1116; Exhibit "P-84" to ""P-84-I-1", CTA Docket Vol. III, pp. 1183-1195; Minutes of the Hearing on September 22, 2015, CTA Docket Vol. III, pp.1250-1254; Resolution dated September 22, 2015, CTA Docket Vol. III, p. 1257; Exhibit "P-85 to "P-86-80-a", CTA Docket Vol. II, pp. 921-1001.
[78] Exhibit "P-84" to ""P-84-I-1", CTA Docket Vol. III, pp. 1183-1195; Minutes of the Hearing on September 22, 2015, CTA Docket Vol. III, pp.1250-1254; Resolution dated September 22, 2015, CTA Docket Vol. III, p. 1257.

ᴍᴍ

Mr. Saumit Ghosh testified that:

1. He is the Senior Manager of the International Business Division of Amira Foods (now known as Amira Pure Foods Private Limited), which is concerned with the distribution and maintaining company presence and business in the international market;

2. As Senior Manager, he is part of the team that charters vessels for delivery of various rice produce to clients of Amira Foods in other countries;

3. Mr. Protik Guha, the Chief Executive Officer (CEO) of Amira Foods, is his superior who assigns certain tasks to be accomplished by him and the International Business Division;

4. In November 2011, Amira Foods and Perum Bulog, an Indonesian state-owned company, entered into a Sales and Purchase Contract for Amira Foods to deliver 100,000 metric tons of Indian White Rice to Perum Bulog from December 2011 to February 15, 2012;

5. For the period January-February 2012, he handled the chartering of six vessels namely: MV Jal Vahini, MV Sun Bright, MV Diamond Way, MV Nordana Sophie, MV Golam-E-Mostafa, and MV Vinalines Mighty for the delivery of 100,000 metric tons of Indian White Rice to Perum Bulog to various ports in Indonesia;

6. 420,000 bags of Indian White Rice was loaded aboard the vessel MV Vinalines Mighty at the Port of Kandla, India bound for Tanjung Priok, Jakarta, Indonesia;

7. Of the six vessels chartered, only MV Vinalines Mighty was unable to discharge its rice cargo despite arrival at the Port of Tanjung Priok, Jakarta on March 8, 2012 due to the expiration of Perum Bulog's authority to import the subject cargo the day before MV Vinalines Mighty arrived at the Port of Tanjung Priok, Jakarta;

8. On March 20, 2012, he received instruction from Mr. Guha to coordinate with the owner of MV Vinalines Mighty to cause the amendment of the Fixture Note dated January 17, 2012 in order to contract another voyage for MV Vinalines Mighty from the Port of Jakarta, Indonesia to the Port of Subic, Philippines;

9. Amira Foods decided to cut business losses by using the Port of Subic as transshipment facility;

10. On March 20, 2012, the Fixture Note was amended by an Addendum executed by Pacific Shipping Private Limited,

introducing the additional voyage of MV Vinalines Mighty from the Port of Jakarta, Indonesia to the Port of Subic, Philippines;

11. The following shipping documents had to be secured prior to MV Vinalines Mighty's voyage to the Port of Subic, Philippines: new bill of lading (Bill of Lading No B/L NO. KDL/VM/01); Commercial Invoice under invoice no. 222215 dated March 20, 2012; Packing List under invoice no. 222215 dated March 20, 2012; Certificate of Origin under invoice no. 222215 dated March 20, 2012; Phytosanitary Certificate with PSC No. 51PC572628 dated March 2, 2012; Inspection Certificate of Quality, Weight and Packing of the Cargo dated March 6, 2012; and Fumigation Certificate;

12. Upon the execution of the Addendum to the Fixture Note the original bill of lading was surrendered to the ship owner, in return, a new bill of lading showing the Port of Subic as the port of discharge was issued to Amira Foods;

13. On March 27, 2012, MV Vinalines Almighty sailed for Subic and arrived there on April 4, 2012;

14. He monitored the unloading of the 420,000 bags of Indian White Rice cargo from April 5, 2012 to April 20, 2012;

15. The unloading of the said 420,000 bags of Indian White Rice was done under the auspices of the BOC and the SBMA and the same was stored inside two (2) SBMA-managed warehouses within the SSEZ;

16. Petitioner is a wholly-owned subsidiary of Amira Foods;

17. On March 20, 2012, Amira Foods sold the 420,000 bags of Indian White Rice to petitioner on a "high sea sale";

18. He stayed in the Philippines, to look after the unloaded Indian White Rice cargo and await instructions of Mr. Guha;

19. Amira Foods never removed from the SSEZ, a single sack of Indian White Rice;

20. During his stay in the Philippines and before the issuance of the WSD against the subject rice, he received numerous SMS or text messages from unknown numbers threatening the seizure of the rice;

21. He forwarded the SMS or text messages from unknown numbers threatening the seizure of the rice he received to Mr. Guha; and,

22. Petitioner was unable to transship the rice cargo because on May 15, 2012, the District Collector of Customs of the Port of Subic issued a WSD for the rice cargo.

Mr. Vicente P. Cuevas testified that:

1. He is the President of CAMJ Construction, Inc. (CAMJ), engaged in construction business;

2. Mr. Protik Guha is the Chief Executive Officer of Amira Pure Foods Private Limited formerly known as Amira Foods (India), Limited. Mr. Guha was personally introduced to him by his business partner sometime in October 2011 in a social meeting, to discuss, among others, possible investment opportunities in the Philippines;

3. Sometime in March 2012, Mr. Guha sought his assistance for the transshipment of the rice cargo on board MV Vinalines Mighty which was originally destined for the Port of Jakarta, Indonesia to the SSEZ;

4. In response to Mr. Guha's plea for assistance, Mr. Cuevas arranged for Mr. Guha to meet the representatives of Container Bridge, and Metro Eastern Trading Corporation sometime in March 2012 in Makati City;

5. Mr. Guha eventually agreed to retain the services of Metro Eastern to handle the transshipment requirement of petitioner; and,

6. Petitioner and Metro Eastern executed a Memorandum of Agreement dated March 26, 2012 for the transshipment of 21,000 metric tons of Indian White Rice in SSEZ.

Mr. Homayun Kabir Caudary testified that:

1. He is the sole proprietor of Hamara Shipping Agency Hamara), providing services related to all shipping and charter services;

2. Sometime in January 2012, Amira Foods, through Mr. Saumit Ghosh, retained the services of Hamara to charter a vessel from Kandla, India to Jakarta, Indonesia to transport a cargo of Indian White Rice;

3. Pursuant to their engagement, the vessel MV Vinalines Mighty was chartered by Hamara for Amira Foods bound for Jakarta, Indonesia;

4. MV Vinalines Mighty reached the Port of Jakarta on March 8, 2012 ready to discharge its cargo but the consignee refused to accept delivery due to the late arrival of the vessel;

5. Because of the inability to discharge the cargo in Jakarta, Indonesia, Hamara was instructed by Amira Foods to amend the Fixture Note dated January 17, 2012 so that MV Vinalines Mighty can have another voyage from Jakarta, Indonesia to the Port of Subic, Philippines;

6. On March 20, 2018, an Addendum between Amira Foods and the ship owner, Pacific Shipping was executed to reflect the additional voyage of MV Vinalines Mighty from Jakarta, Indonesia to the Port of Subic, Philippines;

7. After executing the Addendum, Amira Foods surrendered the first set of bill of lading to the ship owner, Pacific Shipping, in order that a second set of bill of lading reflecting the voyage from Jakarta, Indonesia to the Port of Subic, Philippines be issued;

8. On March 28, 2012, the second set of the bill of lading was issued; and,

9. Per standard international shipping industry practice, the change in port of discharge can only be done when the first set of bill of lading is surrendered to the ship owner or discharge port agent.

Mr. Protik Guha testified that -

1. He is the Chief Executive Officer (CEO) of Amira Pure Foods Private Limited (Amira Pure Foods) formerly known as Amira Foods and petitioner's Marketing Head since May 2011;

2. As CEO and Marketing Head, he looks into the management and systems of the company and oversees the international marketing and the sales functions thereof;

3. Amira Pure Foods predominantly exports processed rice, basmati rice, specialty rice from India and Thailand, and ready to eat packaged food products to countries in Europe, the Middle East; Indonesia; West Africa, among others;

4. Petitioner is 100%-owned subsidiary company of Amira Foods;

5. On November 16, 2011, Amira Foods and Perum Bulog, an Indonesian state-owned company entered into a Sales and Purchase Contract for Amira Foods to deliver 100,000 metric tons

of Indian long-grain white rice to Indonesia from December 2011 to February 2012;

6. Amira Foods could only deliver 71,000 metric tons of the contracted quantity which were shipped in six (6) vessels from the ports of Kakinara, Mumbai and Kandla, India from January to February 2012;

7. He instructed Mr. Saumit Gosh to charter vessels to take the rice cargo to ports in Indonesia under the Sales and Purchase Contract;

8. Only five (5) of the six (6) vessels chartered made it to their intended ports of destination unloading 49,000 metric tons of rice as evidenced by corresponding Certificates of Discharge;

9. MV Vinalines Mighty left the port of Kandla, India on February 24, 2012 containing 420,000 bags or 21,000 metric tons of rice, as evidenced by the Kandla Port Clearance Certificate dated February 24, 2012, Bill of Lading dated February 24, 2012; Commercial Invoice No. 222191 dated February 3, 2012; Packing List dated February 3, 2012 under Commercial Invoice No. 222191; Phytosanitary Certificate No. 51PC572628 dated February 25, 2012 addressed to Perum Bulog which was later amended to indicate Metro Eastern Trading Corporation; Load Port Survey Report dated March 6, 2012 issued by SGS, the independent agency nominated by Perum Bulog to certify that 21,000 metric tons of rice had been loaded on MV Vinalines Mighty bound for Jakarta, Indonesia; SGS Crop Year Certificate dated March 6, 2012; SGS Inspection Certificate of Quality, Weighing and Packing of Cargo dated March 6, 2012; SGS Health Certificate dated March 6, 2018; Certificate of Origin No. 298314 dated February 3, 2012 issued by the Chamber of Commerce and Industry of the government of India; and Fumigation Certificate dated February 25, 2012 issued by Pest Relief India;

10. MV Vinalines Mighty reached Jakarta, Indonesia on March 8, 2011;

11. MV Vinalines Mighty tendered a Notice of Readiness to the port authorities and the discharge port agent, Ben Lines Agency, stating that it is ready to discharge the 420,000 sacks or 21, 000 metric tons of Indian rice;

12. MV Vinalines Mighty was not allowed to unload its rice cargo because Perum Bulog's import permit or license, which allows it to accept and to allow the vessel to unload rice under the Sales and Purchase Contract, was valid only until March 7, 2011 and to that effect, Perum Bulog sent Amira Foods a rejection letter;

13. Under the Fixture Note dated January 17, 2012 and agreement with owners of MV Vinalines Mighty, if the vessel did not discharge cargo and stayed idle at the port of Jakarta, the discharge port, Amira Foods had to pay USD5,000.00 demurrage fee per day to the owners of MV Vinalines Mighty;

14. Faced with the problem and demurrage fees, they looked for options to temporarily unload this at a free port, at a transshipment port;

15. Amira Foods did not consider returning the rice cargo to Kandla, India because it is costly;

16. Amira Foods considered the ports of Subic and Singapore but ultimately chose Subic because Singapore was expensive;

17. He conducted due diligence, meeting representatives of Container Bridge, a logistics support company and clearing agent based in Manila, and Metro Eastern, an official locator company of the port of Subic. He also met with the Subic Bay Port Authorities, saw the storage facilities, got the costings and finally made the decision of coming to Subic;

18. After deciding on the Port of Subic, he instructed Mr. Ghosh to speak to the owner of MV Vinalines Mighty and ask them to get prepared and to have a new contract for them to sail from the port of Jakarta to the Port of Subic;

19. An Addendum to the Fixture Note dated January 17, 2012 was executed for the voyage to the Port of Subic to take place since the Fixture Note is originally for the contract from India to Jakarta;

20. The execution of the Addendum was per normal shipping practices as it is needed as proof of voyage from one place to another;

21. He received an e-mail dated March 20, 2012 from Container Bridge giving instructions to be followed as per local shipping documents needed for temporarily unloading the rice cargo in Subic;

22. Thereafter, in the Philippines, a Memorandum of Understanding was made between the authorized locator Metro Eastern and petitioner for temporary storage and transshipment of the rice cargo;

23. The Bill of Lading was amended to indicate Metro Eastern as the new consignee;

24. A "high sea sale" contract was made between Amira Foods and petitioner, under his supervision;

25. On April 4, 2012, MV Vinalines Mighty arrived at the Port of Subic;

26. Petitioner hired Intertek, an independent agency to monitor the discharge of the MV Vinalines Mighty at the Port of Subic to ensure that the 420,000 sacks of rice get out of the vessel, and unloaded and stored temporarily at the warehouses;

27. On April 5, 2012, customs granted MV Vinalines Mighty entry, boarded the vessel and allowed the discharge of the rice cargo into the warehouses being monitored by Metro Eastern and Intertek;

28. On April 17, 2012, unloading of the rice cargo from the vessel was completed;

29. Petitioner was unable to transship the rice cargo as it was seized and detained by the Customs of the Philippines;

30. Mr. Ghosh forwarded to him the threats sent to his local mobile asking him to sell the rice cargo locally, to people in the Philippines, otherwise they will have the cargo seized by the customs authorities;

31. He advised Mr. Ghosh to ignore and not to heed the threats received towards the end of first week of May until the middle of May 2012;

32. Around 14 or 15 May, 2012, the seizure order was issued by the customs authorities;

33. Petitioner negotiated with local buyers after the threat that became actually a reality. They took notice of the fact that there is definitely some companies or people who want the rice cargo to be sold to them and it was an option considered only for the fact that any astute businessman would like to have the minimum losses because a transshipment would again involve expense of freight, and loading into the vessel then chartering of another vessel. Thus, petitioner chose to speak to licensed importers or to people who had legitimate licenses from the NFA in the Philippines to whom it may sell the rice cargo; and,

34. Not a single sack of rice was taken out of the freeport.

On April 25, 2016, within the extended period,[79] petitioner filed its Formal Offer of Evidence.[80] Petitioner's Exhibits were admitted in the Resolution dated September 21, 2016[81] except Exhibits "P-39", "P-46", "P-47" and "P-48" which were denied for lack of proper identification and for failure to present their originals for comparison, after considering respondent's objections thereto.[82] On October 11, 2016, petitioner timely filed a Motion for Reconsideration of the Resolution dated September 21, 2016.[83] The same was, however, denied by the Court in the Resolution dated January 11, 2017,[84] after considering respondent's objections thereto.[85]

On the other hand, respondent presented its sole witness, **Mr. Errol B. Albano**, District Collector of the Port of Subic, who testified on direct examination by way of Judicial Affidavit.[86] He was cross-examined by petitioner's counsel and further underwent re-direct and re-cross examination.[87] He testified that:

> 1. Pursuant to the Tariff and Customs Code of the Philippines (TCCP), as amended as District Collector of the Port of Subic, he has jurisdiction over all matters arising from the enforcement of tariff and customs laws within the Port of Subic;
>
> 2 He reviewed all documents pertaining to the arrival of MV Vinalines Mighty and its cargo;
>
> 3. He verified with Mr. Domingo M. Mendoza, Jr., Boarding Officer who conducted the Boarding Inspection and Formalities of MV Vinalines Mighty, the following documents submitted by the vessel's officers to him: Bill of Lading; Commercial Invoice; Packing List; Inward Foreign Manifest; Certificate of Origin; Fumigation Certificate; and SGS Inspection Certificate of Quality, Weight and Packing of the Cargo;

---

[79] Resolution dated xx
[80] CTA Docket Vol. III, pp. 1352-1370.
[81] CTA Docket Vol. IV, pp. 1705-1709.
[82] Comment (To the Formal Offer of Evidence of petitioner Amira C Foods International DMCC), CTA Docket Vol. IV, pp. 1649-1659.
[83] CTA Docket Vol. IV, pp. 1710-1715.
[84] CTA Docket Vol. IV, pp. 1739-1745.
[85] Comment (on the Motion for Partial Reconsideration dated October 11, 2016), CTA Docket Vol. IV, pp. 1725-1733.
[86] Exhibit "R-11", CTA Docket Vol. II, pp. 577-590; Minutes of the Hearing on May 23, 2017, CTA Docket Vol. IV, pp. 1785-1786; Order dated May 23, 2017, CTA Docket Vol. IV, pp. 1787-1788.
[87] Minutes of the Hearing on May 23, 2017, CTA Docket Vol. IV, pp.1785-1786; Order dated May 23, 2017, CTA Docket Vol. IV, pp.1787-1788.

4. He observed that the Port of Destination/Port of Discharge listed in the said documents is Port of Subic and/or the country of destination is the Philippines;

5. He instructed the Chief, Law Division to make necessary verification with the SBMA but was informed that Major Elpidio R. Manuel, ESS, already made the necessary verification in its letter dated April 16, 2012 addressed to Atty. Redentor Tuazon, OIC, Senior Deputy Administrator, SBMA;

6. In reply to the April 16, 2012 Letter, Atty. Tuazon replied that no admission entry has been filed by the consignee;

7. He verified with the NFA whether the NFA authorized the importation of the shipment since rice is a regulated commodity, thus an NFA permit is necessary to import the same;

8. He was given a copy of the April 18, 2012 Letter addressed to Major Elpidio Jose R. Manuel from Mr. Angelito T. Banayo, informing that the consignee of the shipment has not participated in any of NFA's open rice importation;

9. Given the information he had, he concluded that sacks of rice were imported into the Philippines and meant for local consumption;

10. Since the requirements for rice importation are absent, the issuance of a WSD is in order; and;

11. He issued the WSD dated May 15, 2012.

On June 7, 2017, respondent posted its Formal Offer of Evidence.[88] Respondent's Exhibits were admitted in the Resolutions dated August 7, 2017[89] and May 25, 2018[90] despite petitioner's objections thereto.[91]

The parties were given a period of thirty (30) days from receipt of the Resolution dated May 25, 2018[92] to file their respective memoranda. On June 29, 2018, respondent timely posted its

---

[88] CTA Docket Vol. IV, pp. 1798-1808.
[89] CTA Docket Vol. IV, pp. 1907-1908.
[90] CTA Docket Vol. IV, pp. 2042-2045.
[91] Comment/Objections to the Formal Offer of Evidence, CTA Docket Vol. IV, pp. 1895-1901; Comment (on the Motion for Reconsideration), CTA Docket Vol. IV, pp. 1956-1967.
[92] CTA Docket Vol. IV, p. 2045.

Memorandum.[93] On July 30, 2018, within the extended period,[94] petitioner filed its Memorandum.[95] Thus, in the Resolution dated August 7, 2018, the case was submitted for decision.[96]

THE ISSUES

The issues for consideration of the Court, as stipulated by the parties, are the following:

1. Whether the subject shipment stored inside the SSEZ was for importation or transshipment purposes;

2. Whether the subject shipment stored inside SSEZ was within Philippine Customs jurisdiction; and,

3. Whether the seizure and forfeiture of 420,000 bags of Indian White Rice consigned to Metro Eastern Trading Corporation in favor of the government were valid.[97]

THE PARTIES' ARGUMENTS

Petitioner argues that *(i)* the subject rice shipped by petitioner and stored in the SSEZ was for transshipment purposes only; *(ii)* the subject rice transshipped and stored within the SSEZ was beyond the jurisdiction of Philippine Customs Authority, thus, there is no valid justification for the exercise by respondent of its jurisdiction within the SSEZ; and, *(iii)* the seizure, forfeiture and auction of petitioner's 420,000 sacks of Indian White Rice was invalid and violative of petitioner's right to due process.

Petitioner elaborates that the subject rice was part of the intended 100,000 metric tons of Indian White Rice purchased by Perum Bulog for shipment to various ports in Indonesia. After an assessment of available business options, the transshipment of the 21,000-metric ton rice cargo was deemed to be the most economical. It explains that there was a need for a "second set" of documents when MV Vinalines Mighty was rejected in Jakarta, Indonesia. The second set of shipping documents indicating "Port of Subic" as the

[93] CTA Docket Vol. IV, pp. 2052-2079.
[94] Resolution, CTA Docket Vol. IV, p. 2260.
[95] CTA Docket Vol. IV, pp. 2176-2257.
[96] CTA Docket Vol. IV, p. 2260.
[97] Amended Pre-Trial Order, CTA Docket Vol. III, p. 1154.

destination was needed in order for MV Vinalines Mighty to be allowed entry at Subic Bay Freeport. Further, it asserts that MV Vinalines Mighty's discharge of the 21,000-metric ton rice cargo was done with the full knowledge and consent of both the SBMA and BOC. The rice cargo was discharged in good faith, absent any act showing intent to smuggle or import illegally. It contends that there is no illegal importation when there was no act of importation shown. The evidence on record belies any intent to distribute the subject rice cargo for local consumption. It laments that the COC Decision upholding the seizure and forfeiture of petitioner's rice cargo was issued with palpable bias, *sans* probable cause to justify its issuance. The railroading of the forfeiture and auction proceedings over the subject rice cargo was confiscatory and violative of due process.

Respondent counters that the pieces of evidence show that petitioner's goods which were brought inside the SSEZ were not intended for transshipment but for importation. For failure to pay the appropriate customs and duties, the goods were validly seized and forfeited in favor of the government. It argues that while the SSEZ is treated as a separate customs territory, it is created as such merely for economic purposes to ensure free flow or movement of goods and capital within, into and exported out of the SSEZ. Surely, the creation of a Freeport Zone is not intended to make customs laws absolutely inapplicable to articles arriving thereat. It believes that in considering the applicability of customs laws, the intent of the importer is of primordial consideration. If there is intent to unlade in the Philippine customs territories, meaning outside of the SSEZ, then the goods will be subject to customs duties and taxes under the TCCP, as amended, and other tax laws of the Philippines.

THE COURT'S RULING

This Court finds the Petition for Review meritorious.

Timeliness of the appeal

Under Section 11 of Republic Act No. 1125,[98] as amended, in relation to Section 3(a), Rule 8 of the RRCTA,[99] a party adversely

[98] SEC. 11, Who may appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or

affected by a decision or ruling of the COC may appeal to the Court by petition for review within thirty (30) days from receipt of the copy of such decision or ruling.

Petitioner allegedly received the assailed September 11, 2012 Decision of the COC on October 3, 2012,[100] which respondent denied admission based on lack of knowledge or information sufficient to form a belief as to the truth or falsity thereof in its Answer.

Section 10, Rule 8 of the Rules of Court, as amended,[101] require respondent to specify each material allegations of fact, the truth of which it does not admit, and whenever practicable, to set forth the substance of the matters upon which respondent relies to support its denial.

A denial is not specific simply because it is so qualified by respondent. A general denial does not become specific by the use of the word specifically. When the matters of whether the respondent alleges having no knowledge or information sufficient to form a belief, are plainly and necessarily within the respondent's knowledge, its alleged ignorance or lack of information will not be considered as a specific denial. Section 11, Rule 8 of the said Rule, provides that

---

after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. xxx

[99] SEC. 3. Who may appeal; period to file petition. –
(a) **A party adversely affected** by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or **by a decision or ruling of the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction **may appeal to the Court by petition for review filed within thirty days after receipt of the copy of such decision** or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of taxes.

[100] Pars. 2.2 and 7.3, Petition for Review, CTA Docket Vol. I, p. 9; Pars. 37 and 171, Memorandum dated July 30, 2018, CTA Docket Vol. IV, p. 2191 and 2252.

[101] SEC. 10. *Specific denial*. - A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as its true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

material averments in the petition other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied.[102] An unexplained denial of information within the control of the pleader, or is readily accessible to it, is evasive and is insufficient to constitute an effective denial.[103]

In this case, the assailed September 11, 2012 Decision emanated from the COC, necessarily the date when a copy thereof was served to petitioner is best answered by the COC. As representative of the COC, respondent cannot feign ignorance and could have easily verified the same with the COC and alleged the correct date of receipt thereof. Thus, respondent's denial was ineffective because such fact is plainly and necessarily within the knowledge of the COC. Respondent's denial is equivalent to an admission that, indeed, petitioner received the assailed September 11, 2012 Decision of the COC on October 3, 2017.

Since respondent is deemed to have admitted petitioner's receipt of the assailed September 11, 2012 Decision of the COC on October 3, 2017, the filing of petitioner's Petition for Review on October 16, 2017 was timely. Hence, the Court has jurisdiction over the present Petition.

SSEZ as a separate customs territory

Republic Act (R.A.) No. 7227[104] otherwise known as the Bases Conversion and Development Act of 1992 created the SSEZ. R.A. No. 7227 was amended by R.A. No. 9400,[105] which extended the benefits under R.A. No. 7227 to other special economic and free port zones.

Section 12 of R.A. No. 7227, as amended by R.A. No. 9400, provides that the SSEZ shall be operated and managed as a **separate customs territory** ensuring the free flow or movement of goods and capital within, into and exported out of the SSEZ as well

---

[102] *Philippine National Bank vs. Honorable Court of Appeals and Atty. Moreno Cua,* G.R. No. 126153, January 14, 2004.
[103] *Republic of the Philippines vs. Honorable Sandiganbayan (Special First Division), et al.*, G.R. No. 152154, July 15, 2003.
[104] An Act Accelerating the Conversion of Military Reservations into other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and Other Purposes.
[105] An Act Amending Republic Act No. 7227, as amended, Otherwise Known as the Bases Conversion and Development Act of 1992, and for Other Purposes.

OM

as provide incentives such as tax and duty-free importations of raw materials, capital and equipment, to wit:

> "Sec. 12. Subic Special Economic Zone. Xxx xxx xxx.
>
> The abovementioned zone shall be subjected to the following policies:
>
> (a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;
>
> (b) **The Subic Special Economic Zone shall be operated and managed as a <u>separate customs territory</u> ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment**. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines;
>
> xxx xxx xxx." (Boldfacing supplied)

Section 3(n) of the Implementing Rules and Regulations (IRR) of RA 7227[106] defines the term **"Customs Territory"**, as follows:

> "n. Customs Territory refers to the **portion of the Philippines outside the SBF[107] where the Tariff and Customs Code of the Philippines and other national tariff and customs laws are in force and effect.**" (Boldfacing supplied)

---

[106] Rules and Regulations Implementing the Provisions relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority under Republic Act No. 7227.

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

In *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[108] the Supreme Court lengthily discussed the concept of a "separate customs territory", *viz.*:

> "Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a **separate customs territory**. **The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory**. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority". Thus, *Toshiba* has discussed that:
>
>> This Court agrees, however, that PEZA-registered enterprises, **which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**
>>
>> **<u>It is important to note herein that respondent Toshiba is located within an ECOZONE.</u>** An ECOZONE or a Special Economic Zone has been described as –
>>
>> . . . [S]elected areas with highly developed or which have the -Q potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.
>>
>> **The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.**
>
> Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; **<u>thus, creating the fiction that the ECOZONE is a foreign territory.</u>** As a result, sales made by a supplier in the Customs Territory to a purchaser in the

---

[108] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.

ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory." (Boldfacing and underscoring supplied)

Meanwhile, the nature of a freeport under R.A. No. 7227, as a separate customs territory, was elucidated in *Hon. Executive Secretary, et al. vs. Southwing Heavy Industries, Inc. et al.,*[109] to wit:

"RA 7227 was enacted providing for, among other things, the sound and balanced conversion of the Clark and Subic military reservations and their extensions into alternative productive uses in the form of Special Economic and Freeport Zone, or the Subic Bay Freeport, in order to promote the economic and social development of Central Luzon in particular and the country in general.

The Rules and Regulations Implementing RA 7227 specifically defines the territory comprising the Subic Bay Freeport, referred to as the Special Economic and Freeport Zone in Section 12 of RA 7227 as "a separate customs territory consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Philippine-U.S. Military Base Agreement as amended and within the territorial jurisdiction of Morong and Hermosa, Province of Bataan, the metes and bounds of which shall be delineated by the President of the Philippines; provided further that pending establishment of secure perimeters around the entire SBF, the SBF shall refer to the area demarcated by the SBMA pursuant to Section 13 hereof."

xxx xxx xxx

The Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. The concept of this zone was explained by Senator Guingona in this wise:

Senator Guingona. Mr. President, the special economic zone is successful in many places, particularly Hong Kong, which is a free port. The difference between a special economic zone and an industrial estate is simply expansive in the sense that the commercial activities, including the establishment of banks, services, financial institutions, agro-industrial activities, maybe agriculture to a certain extent.

---

[109] G.R. Nos. 164171, 164172 and 168741, February 20, 2006.

> **This delineates the activities that would have the least of government intervention, and the running of the affairs of the special economic zone would be run principally by the investors themselves, similar to a housing subdivision, where the subdivision owners elect their representatives to run the affairs of the subdivision, to set the policies, to set the guidelines.**
>
> **We would like to see Subic area converted into a little Hong Kong, Mr. President, where there is a hub of free port and free entry, free duties and activities to a maximum spur generation of investment and jobs.**
>
> While the investor is reluctant to come in the Philippines, as a rule, because of red tape and perceived delays, we envision this special economic zone to be an area where there will be minimum government interference.
>
> The initial outlay may not only come from the Government or the Authority as envisioned here, but from them themselves, because they would be encouraged to invest not only for the land but also for the buildings and factories. As long as they are convinced that in such an area they can do business and reap reasonable profits, then many from other parts, both local and foreign, would invest, Mr. President.

With minimum interference from the government, investors can, in general, engage in any kind of business as well as import and export any article into and out of the Freeport. These are among the rights accorded to Subic Bay Freeport Enterprises under Section 39 of the Rules and Regulations Implementing RA 7227, thus

> SEC. 39. Rights and Obligations.- SBF Enterprises shall have the following rights and obligations:
>
> a. To freely engage in any business, trade, manufacturing, financial or service activity, and to import and export freely all types of goods into and out of the SBF, subject to the provisions of the Act, these Rules and other regulations that may be promulgated by the SBMA;

Citing, *inter alia*, the interpellations of Senator Enrile, petitioners claim that the free flow or movement of goods and capital only means that goods and material brought within the Freeport shall not be subject to customs duties and other taxes and should not be construed as an open floodgate for entry of all kinds of goods. They thus surmise that the importation ban on motor vehicles is applicable within the Freeport. Pertinent interpellations of Senator Enrile on the concept of Freeport is as follows:

> Senator Enrile: Mr. President, I think we are talking here of sovereign concepts, not territorial concepts. The

> concept that we are supposed to craft here is to carve out a portion of our terrestrial domain as well as our adjacent waters and say to the world: Well, you can set up your factories in this area that we are circumscribing, and bringing your equipment and bringing your goods, you are not subject to any taxes and duties because you are not within the customs jurisdiction of the Republic of the Philippines, whether you store the goods or only for purposes of transshipment or whether you make them into finished products again to be reexported to other lands.
>
> x x x x
>
> **My understanding of a free port is, we are in effect carving out a part of our territory and make it as if it were foreign territory for purposes of our customs laws, and that people can come, bring their goods, store them there and bring them out again, as long as they do not come into the domestic commerce of the Republic.**
>
> We do not really care whether these goods are stored here. The only thing that we care is for our people to have an employment because of the entry of these goods that are being discharged, warehoused and reloaded into the ships so that they can be exported. That will generate employment for us. For as long as that is done, we are saying, in effect, that we have the least contact with our tariff and customs laws and our tax laws. Therefore, we consider these goods as outside of the customs jurisdiction of the Republic of the Philippines as yet, until we draw them from this territory and bring them inside our domestic commerce. In which case, they have to pass through our customs gate. I thought we are carving out this entire area and convert it into this kind of concept."

However, contrary to the claim of petitioners, there is nothing in the foregoing excerpts which absolutely limits the incentive to Freeport investors only to exemption from customs duties and taxes. Mindful of the legislative intent to attract investors, enhance investment and boost the economy, the legislature could not have limited the enticement only to exemption from taxes. The minimum interference policy of the government on the Freeport extends to the kind of business that investors may embark on and the articles which they may import or export into and out of the zone. A contrary interpretation would defeat the very purpose of the Freeport and drive away investors.

It does not mean, however, that the right of Freeport enterprises to import all types of goods and article is absolute. Such right is of course subject to the limitation that articles absolutely prohibited by law cannot be imported into the Freeport. Nevertheless, in determining whether the prohibition would apply to the Freeport, resort to the purpose of the prohibition is necessary." (Boldfacing supplied)

Similar to its pronouncement in *Southwing*, the Supreme Court, in *Agriex Co., Ltd. vs. Hon. Titus B. Villanueva, Commissioner, Bureau of Customs*,[110] cited again Senator Enrile's interpellations during the sponsorship of the bill that later became RA No. 9227 in describing the concept of a free port as a separate customs territory.

Indubitably, by legislative fiat the SSEZ shall be regarded as a separate customs territory. In other words, while the SSEZ is geographically located within the Philippines, it is deemed as a separate customs territory and regarded in law as a foreign soil.[111] As a foreign territory, importations into SSEZ are exempted from customs duties and taxes and the government shall have, to a certain extent, minimum interference not only to the business that investors may engage in, but also to the articles that they import into and out of the zone. It goes without saying, however, that the right of investors in SSEZ to import goods and articles is not absolute but subject to the limitation that goods or articles which are absolutely prohibited by law cannot be allowed entry into the SSEZ.

Jurisdiction of BOC over goods from foreign territory that were entered and stored inside the SSEZ

Considering the nature of SSEZ as a separate customs territory, the next issue to be addressed is whether or not the BOC has jurisdiction over goods from a foreign territory which entered and were stored into the SSEZ, such that the BOC may, among others, subject the goods to seizure and forfeiture for violation of customs law.

This issue is not novel.

In *Agriex Co., Ltd.*, the Supreme Court, citing the Rules and Regulations Implementing RA No. 9227 and Customs Administrative Order No. 4-93 (CAO 4-93), made a pronouncement that the Collector of Customs has the authority to institute seizure proceedings and to issue warrant of seizure and detention on goods that are entering the Subic Bay Freeport, subject to the review by the COC, thus:

---

[110] G.R. No. 158150, September 10, 2014.
[111] *Commissioner of Internal Revenue vs. Sekisui Jushi Philippines, Inc.,* G. R. No. 149671, July 21, 2006.

"The Court declares that the Collector of Customs was authorized to institute seizure proceedings and to issue WSDs in the Subic Bay Freeport, subject to the review by the Commissioner of Customs. Accordingly, the proper remedy to question the order or resolution of the Commissioner of Customs was an appeal to the CTA, not to the CA.

Although RA No. 7227 is silent as to the person or entity vested with the authority to seize and forfeit or detain goods and articles entering the Subic Bay Freeport, the implementing rules and regulations (IRR) of R.A. No. 7227 contained the following provisions, to wit:

"Sec. 11. Responsibilities of the SBMA. — Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have the following responsibilities:

xxx xxx xxx

f. Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and these Rules in the SBF:

xxx xxx xxx

(4) **to seize articles, substances, merchandise and records considered to be in violation of the law and these Rules, and to provide for their return to the enterprise or person from whom they were seized, or their forfeiture to the SBMA; . . .**

B. Transactions with the Customs Territory

xxx xxx xxx

Sec. 52. Seizure of Foreign Articles. — Foreign articles withdrawn transported or taken in commercial quantities from the SBF to the Customs Territory without payment of duties and taxes, shall be subject to seizure and forfeiture proceedings pursuant to the pertinent provisions of the Tariff and Customs Code and the National Internal Revenue Code of the Philippines, without prejudice to any criminal and/or administrative actions that may be instituted against the person/persons liable/responsible therefor.

C. Taxes and Fiscal Obligations

xxx xxx xxx

Sec. 60. Search, Arrest, and Seizure by Customs Officials. — Persons, baggage, vehicles and cargo entering or leaving the SBF are subject to search by Customs officials as a condition to enter or leave the SBF. Customs officials are authorized to examine any merchandise held by the SBF Enterprises during regular business hours.

Customs officers may seize any article found during a Customs search upon entering or leaving the SBF to be in violation of any provision of the customs laws for which a seizure is authorized, and such seizure shall be disposed of according to the customs laws. Articles which are prohibited or excluded from the SBF under the rules and regulations of the SBMA which are found by the Customs officials during an audit, examination or check within the SBF may be seized by them and turned over to the SBMA for disposition.

The SBMA may secure the assistance of and/or coordinate with Customs officers to arrest persons in the SBF for violations of the customs laws for which arrest is authorized concerning articles in the Customs Territory destined to the SBF or articles which have been removed from the SBF to the Customs Territory. (Bold underscoring supplied for emphasis)

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

CHAPTER II. GENERAL PROVISIONS

xxx xxx xxx

B. AUDIT, SEARCH, SEIZURE AND ARREST IN ZONE

xxx xxx xxx

3. SEIZURE

Any prohibited or excluded articles found upon search, or through any examination, audit or check of articles in the Zone by Customs may be seized by Customs for violations of Tariff and Customs Code of the Philippines as amended and disposed of in accordance with law.

Under these statutory provisions, both the SBMA and the Bureau of Customs have the power to seize and forfeit goods or articles entering the Subic Bay Freeport, except that SBMA's authority to seize and forfeit goods or articles entering the Subic Bay Freeport has been limited only to cases involving violations of RA No. 7227 or its IRR. There is no question therefore, that the authority of the Bureau of Customs is larger in scope because it covers cases concerning violations of the customs laws.

> The authority of the Bureau of Customs to seize and forfeit goods and articles entering the Subic Bay Freeport does not contravene the nature of the Subic Bay Freeport as a separate customs authority. Indeed, the investors can generally and freely engage in any kind of business as well as import into and export out goods with minimum interference from the Government." (Boldfacing supplied)

While SSEZ is regarded as a separate customs territory where investors are assured of free flow or movement of goods, with the least intervention from the government, it does not follow that the government has completely stripped itself of its inherent authority to regulate the entry into, and movement of goods out of, the SSEZ.

As enunciated by the Supreme Court in *Agriex Co., Ltd.*, "the treatment of the Subic Bay Freeport as a separate customs territory cannot completely divest the Government of its right to intervene in the operations and management of the Subic Bay Freeport, especially when patent violations of customs and tax laws are discovered. After all, Section 602 of the Tariff and Customs Code vests exclusive original jurisdiction in the Bureau of Customs over seizure and forfeiture cases in the enforcement of the tariff and customs laws."

The essence of RA No. 7227 is to primarily treat SSEZ as a foreign territory for purposes of taxes and duties, such that goods brought in SSEZ are exempted from the payment of taxes and duties, until they are taken out from the ecozone and brought into the domestic commerce of the Philippines. RA No. 7227 has not, in any way, removed SSEZ from the ambit of the government's power to seize and forfeit prohibited and excluded goods (including goods without the necessary clearances/permits from appropriate government agencies) that enter SSEZ. Although SBMA's authority was limited to goods that entered SSEZ in violation of RA No. 7227, BOC's authority to seize and forfeit goods is wider in scope as enumerated in the IRR of RA No. 7227 and CAO 4-93.

Hence, albeit goods can be freely brought in and out of the SSEZ, said goods must not be absolutely prohibited by law. In the present case, the shipment involves 420,000 bags of Indian White Rice. Notably, rice is not absolutely prohibited by law but listed under "regulated commodities" or those commodities the importation of which require clearances/permits from appropriate government agencies.[112]

The 420,000 bags of Indian White Rice, stored at the two (2) SBMA-managed warehouses inside the SSEZ, have not entered the Philippine customs territory for purposes of imposing taxes and duties on importation. Pursuant to Section 12(b) of RA No. 7227, SSEZ is a separate customs territory, thus, entry of goods into the SSEZ from abroad shall not be subject to taxes and duties. The removal of the goods from SSEZ, however, to the Philippine customs territory shall be subject to the taxes and duties imposed under the Tariff and Customs Code of the Philippines (TCCP), as amended by the Customs Modernization and Tariff Act (CMTA)[113], the National Internal Revenue Code of 1997, as amended by the Tax Reform for Acceleration and Inclusion [TRAIN] Law and other relevant tax laws of the Philippines.

True, taxes and duties may not be imposed on the 420,000 bags of Indian White Rice while they are inside the SBMA-managed warehouses. Nevertheless, the requirement to secure import permit from NFA for the importation of rice is another matter. Thus, the Court has to resolve the issue of whether or not import permit from NFA is necessary to enter the 420,000 bags of Indian White Rice into the SSEZ.

Requirement to secure import permit from NFA

Section 2530 of the TCCP, as amended, specifies the articles and objects that are subject to forfeiture, *viz.*:

> SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. — Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> xxx xxx xxx
>
> f. **Any article of prohibited importation** or exportation, **the importation** or exportation **of which is effected or attempted contrary to law**, and all other articles which, in the opinion of the

[112] *Secretary of the Department of Finance vs. Court of Tax Appeals (Second Division) and Kutangbato Conventional Trading Multi-Purpose Cooperative*, G.R. No. 168137, August 7, 2013.
[113] Republic Act No. 10863.

> Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former. Xxx (Boldfacing supplied)

To warrant forfeiture under Section 2530 (f) of the TCCP, as amended, the importation must have been unlawful or prohibited.[114] Unlawful importation is defined under Section 3601 of the TCCP, as amended, to wit:

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

The law penalizes the **importation** of any merchandise in any manner contrary to law. The phrase **"contrary to law"** in Section 3601 qualifies the phrase **"import or brings into the Philippines and assists in so doing"**; the qualification does not refer to the word article.[115] In forfeiture proceedings, the burden of proof lies upon the claimant. To warrant the forfeiture of the cargo, there must be a prior showing of probable cause that the cargo was smuggled. Once probable cause has been shown, the burden of proof is shifted to the claimant, *viz.*:[116]

> SEC. 2535. Burden of Proof of Seizure and/or Forfeiture. — In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: **Provided, That probable cause shall first be shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner prescribed in the preceding sections of this Code**. (Boldfacing supplied)

Conformably with the foregoing, respondent seized and forfeited the subject 420,000 bags of Indian White Rice allegedly for having been imported without the necessary import permits as

---

114 M/V "Don Martin" Voy 047 vs. Secretary of Finance, G.R. No. 160206, July 15, 2015.
115 M/V "Don Martin" Voy 047 vs. Secretary of Finance, G.R. No. 160206, July 15, 2015.
116 M/V "Don Martin" Voy 047 vs. Secretary of Finance, G.R. No. 160206, July 15, 2015.

required under Section 2530 (f) of the TCCP, as amended, in relation to NFA rules and regulations governing importation of rice. As a consequence of such forfeiture, respondent is imposed the burden of establishing probable cause prior to such action by showing that the importation of the 420,000 bags of Indian White Rice was effected or attempted contrary to law, or it constituted prohibited importation or smuggled.

Section 2 of Executive Order (E.O.) No. 1028 vests upon the NFA the exclusive authority to import rice when necessary and when authorized by the President of the Philippines, *viz.*:

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

The Memorandum of Agreement (MOA) between NFA and BOC dated August 3, 2001 and Customs Memorandum Order (CMO) No. 20-2001 issued by the BOC on August 27, 2001 provide for the requirement to secure import permit from NFA before importation of rice into the country is made. The pertinent parts of the MOA read:

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

M

Pursuant to this MOA, the BOC issued Customs Memorandum Order (CMO) No. 20-2001 which provides:

> "3.1. All shipments of rice imported into the country shall be covered by an Import Authority from the National Food Authority and the same shall be entered and discharged only in a District Port and not in any sub-port or private wharf.
>
> xxx xxx xxx
>
> 4.4. The absence of the pertinent Shipping Permit and/or Import Authority or any violation thereof shall be a ground for the seizure of the rice shipment/vessel in question, which shall be then proceeded against in accordance with applicable law, rules and regulations."

From the foregoing, it is clear that import permit from NFA is required for the **importation of rice into the country**. Importation refers to bringing goods from abroad into the Philippine customs jurisdiction.[117] Under Section 1202 of the TCCP, importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port. Meanwhile, CMTA, which amended the TCCP, defines importation as the act of bringing in of goods from a foreign territory into Philippine territory, whether for consumption, warehousing, or admission as defined in CMTA.[118]

As previously discussed, the SSEZ is considered and managed as a separate customs territory or by legal fiction, as foreign territory, so as to ensure free flow or movement of goods and capital within, into and out of SSEZ. Thus, the subject shipment of 420,000 bags of Indian White Rice, which entered and were stored in two (2) SBMA warehouses in the SSEZ, may not be considered as imported into Philippine customs territory. Otherwise stated, petitioner was not required to secure import permit from NFA upon entry of the cargo into the SSEZ.

The requirement to secure and present import permit from NFA becomes indispensable only when the 420,000 bags of Indian White Rice are withdrawn from the SSEZ and introduced into the Philippines customs territory, for it is only at that point that said 420,000 bags of Indian White Rice are considered imported into the country for purposes of applying the provisions CMO No. 20-2001.

---

[117] *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation* G.R. No. 210588, November 29, 2016.
[118] Section 102(Z) of CMTA.

Purpose of storing the Indian White Rice inside the two SBMA warehouses inside the SSEZ

Petitioner claims that the subject shipment of Indian White Rice was never originally intended to be shipped to the Philippines, much less intended for local consumption. Rather, petitioner was compelled to merely temporarily store the same within SSEZ to avoid mounting demurrage charges and for transshipment purposes.[119]

Respondent, however, insists that the Indian White Rice is not intended for transshipment but for importation. Petitioner could have readily indicated the final destination of the goods, other than the Philippines. He asserts that Mr. Guha's testimony confirms that petitioner took into consideration the possibility of importing the rice into the Philippines, and in the event thereof, the payment of corresponding taxes and duties. Respondent also argues that the Bill of Lading, Packing List and Commercial Invoice, Fumigation Certificate, Inward Foreign Manifest, SGS Inspection Certificate of Quality and Certificate of Origin, as determined by the District Collect of the Port of Subic, clearly indicate that the Port of Subic is the port of final destination/port of discharge. Further, if the rice shipment was intended merely as transit goods, petitioner through consignee, Metro Eastern Trading Corporation, should have complied with the Joint Memorandum Order dated August 21, 2008 which requires the filing of an admission entry or Transit and Admission Permit (T/AP). Allegedly, petitioner's import documents and its failure to file an admission entry or T/AP clearly negate any intent to export thereafter. On the contrary, per representation of its consignee, Metro Eastern Trading Corporation, the latter's allocation permit from the NFA was still in process. Further, it is insisted that the provisions of the Memorandum of Agreement between petitioner and respondent, and negotiations undertaken by petitioner with NFA licensed entities for sale of the subject rice shipment are indicative of such intent. Thus, the only logical conclusion that can be had is that the subject rice was truly intended for domestic consumption.[120]

Respondent's arguments fail to persuade.

Petitioner's intention in bringing the Indian White Rice to the SFZ is not controlling in this case. Truth be told, it is not the intention to import goods which is taxable but the act of actual bringing of

[119] Memorandum dated July 30, 2018, CTA Docket Vol. IV, pp. 2199-2247.
[120] Memorandum dated June 28, 2018, CTA Docket Vol. IV, pp. 2057-2070.

goods into the Philippine Customs Territory or importation. Mere intent to import rice, *per se*, is not a taxable transaction that is subject to tax and customs laws, *i.e.,* NIRC and TCCP, as amended, as well as the requirement to secure NFA import permit.

Indeed, the documents presented by petitioner designated the Port of Subic as the Port of Final Destination. While the said documents do not indicate the intent to bring the goods outside of the Philippines, they likewise do not indicate that the Indian White Rice subject thereof are destined to be brought to other places in the Philippines other than the SSEZ.

Interestingly, simple perusal of the Joint Memorandum Order dated August 21, 2008 reveals that the filing of an admission entry or T/AP is the responsibility of the freeport locator or enterprise. Section 1301 of the TCCP[121] even provides that imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, **from the date of discharge of the last package from the vessel or aircraft**. In this case, it is undisputed that the last bag of Indian White Rice was discharged on April 20, 2012,[122] thereby giving petitioner until May 20, 2012 within which to file an admission entry or T/AP. On May 18, 2012 or two days before the lapse of the thirty (30)-day period to file an admission entry or T/AP, petitioner received the WDL seizing its Indian White Rice. Thus, petitioner cannot be faulted for failing to file an admission entry or T/AP since the Indian White Rice was already seized prior to the lapse of the prescribed period to do so.

Notably, in the April 16, 2012 Letter of Atty. Redentor S. Tuazon, OIC, Senior Deputy Administrative-Operations, SBMA addressed to Major Manuel,[123] the former recognized the applicability

---

[121] SEC. 1301. Persons Authorized to Make Import Entry. - Imported articles must be entered in the customhouse at the port of entry within thirty (30) days, which shall not be extendible, from the date of discharge of the last package from the vessel or aircraft either (a) by the importer, being holder of the bill of lading, (b) by a duly licensed customs broker acting under authority from a holder of the bill or (c) by a person duly empowered to act as agent or attorney -in -fact for each holder: Provided, That where the entry is filed by a party other than the importer, said importer shall himself be required to declare under oath and under the penalties of falsification or perjury that the declarations and statements contained in the entry are true and correct: Provided, further, That such statements under oath shall constitute prima facie evidence of knowledge and consent of the importer of violation against applicable provisions of this Code when the importation is found to be unlawful (R.A. 7651, June 04, 1993)

[122] Par. 4, II (A) Facts, Amended Pre-Trial Order, CTA Docket Vol. III, p. 1149

[123] Exhibit "R-8", CTA Docket Vol. IV, p. 1824.

of Joint Memorandum of Agreement between SBMA and BOC dated July 18, 2007, as he informed the latter that pursuant to such Memorandum "the consignee (of the 420,000 bags of Indian White Rice) is allowed at least 30 days to file an entry before the goods can be considered unclaimed and abandonment mechanism to be initiated."

With regard to the provisions in the Memorandum of Agreement between petitioner and Metro Eastern Trading Corporation on the withdrawal of the cargo and payment of taxes/duties with the BOC and its Annex indicating the payment of duties and taxes and trucking services as well as the negotiations petitioner had with NFA licensed entities, the same simply bolsters petitioner's proposition that payment of taxes and duties shall be made at the appropriate time and stage should the commodity eventually enter the Philippine customs territory. The undisputed fact, however, remains that petitioner did not bring the Indian White Rice to the Philippine Customs Territory at the time of seizure and forfeiture, thus, outside the reach of CMO NO, 20-2001 anent the requirement of securing import permit from NFA.

Finally, the SMS or text messages[124] allegedly received by petitioner's officers from individuals who obviously represented themselves with apparent authority to influence the then seizure and forfeiture proceedings before the BOC does not escape this Court's attention. The text messages read:

"a) SMS from Mr. Amit Chandramani (09178864035) as follows:-

'Mr. Amit Chandramani return call thank you' – Received on 9th May, 2012 time 20:41:13

b) SMS from Mr. Amit Chandramani (09178864035) as follows:-

'Mr. Gosh, are you coming to manila?' – Received on 10-May-2012, time 12:59:51.

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

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

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

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

[124] Exhibit "P-73", CTA Docket Vol. III, pp.1600-1601.

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

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

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

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

g) SMS from Rick (09175580883) as follows:-
'Meeting tomorrow with our secretary mr.hill....ok!'. Received on 13-May-2012, time 21:35:41.

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

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

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

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

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

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

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

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

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

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

m) SMS from Rick (09175580883) as follows:-
'Wats the number of your office in manila?dont keep us waiting. because they will order the siezure/confiscate all. We are trying to help you out with that. Received on 14-May-2012, time 11:17:48.

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

While the text messages were confirmed through the testimony of petitioner's witness, Mr. Saumit Ghosh, no evidence was presented by respondent in denial or refutation thereof. It will do well for the SSEZ, the BOC and SBMA to conduct an appropriate investigation and, at the very least, adopt measures to ensure that similar nefarious incidents are aborted. Referral of the matter to the Office of the Ombudsman may even be appropriate.

All told, the Court is convinced that petitioner is entitled to its pleaded reliefs.

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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