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

**FIRST DIVISION**

**SILVERICE TRADING CORPORATION,**
*Petitioner,*

- versus -

**HON. REY LEONARDO GUERRERO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF CUSTOMS, ATTY. ERASTUS SANDINO AUSTRIA, IN HIS OFFICIAL CAPACITY AS DISTRICT COLLECTOR, MANILA INTERNATIONAL CONTAINER PORT AND THE BUREAU OF CUSTOMS,**
*Respondents.*

**CTA Case No. 10088**

Members:

**DEL ROSARIO**, *PJ, Chairperson,*
**MANAHAN**, and
**REYES-FAJARDO**, *JJ.*

Promulgated:

SEP 22 2022 ; 3:00 p.m.

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# DECISION

**REYES-FAJARDO, *J.*:**

This Petition for Review dated May 31, 2019, filed by Silverice Trading Corporation, impugns the Consolidated Order dated April 1, 2019 and Resolution dated May 2, 2019, both issued by Honorable Rey Leonardo B. Guerrero, in his official capacity as Commissioner of Customs (COC). The impugned Consolidated Order affirmed the Decree of Abandonment dated January 28, 2019, issued by Atty. Erastus Sandino Austria, District Collector of Manila International Container Port (DC-MICP), whereas the impugned Resolution approved the public auction of Silverice Trading Corporation's rice shipments.

## FACTS

Petitioner Silverice Trading Corporation is a stock corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business at Intercity, San Juan, Balagtas, Bulacan.[1]

Respondent Hon. Rey Leonardo B. Guerrero, in his official capacity as COC, respondent Atty. Erastus Sandino Austria, in his official capacity as DC-MICP, and respondent BOC, are the government officials and bureau, respectively, tasked with exercising customs powers, duties and functions, and implementing customs laws pursuant to Sections 201, 202 and 210 of Republic Act No. 10863,[2] otherwise known as "The Customs Modernization and Tariff Act," or CMTA for brevity.[3]

On August 20, 2018, petitioner's shipments containing IRRI-6 White Rice 5% Broken Double Silky Policy and Sortexed (rice shipments), covered by Bill of Lading (BL) No. 550810053760, arrived at the MICP on board the vessel M/V LODESTAR.[4]

On October 12, 2018, petitioner filed its Entry on its rice shipments, followed by its payment of the corresponding duties and taxes thereon on October 22, 2018, amounting to ₱3,913,444.00.[5]

In the Letters dated January 11[6] and January 23, 2019,[7] petitioner informed respondent DC-MICP that it had no intention of abandoning its rice shipments. It reasoned that the delay in filing the entry and release of said shipments was due to the late transmission of shipping documents, undue delay in the approval and release of import permits, phytosanitary certificates, and its actions seeking discounts for storage and demurrage charges thereof.

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1 Par. 2.1, *Petition for Review*, as admitted in Par. 4, *Answer (To the Petition for Review dated May 31, 2019)*. Docket (Vol. I), pp. 18 and 202, respectively.

2 AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION.

3 Par. 2.2, *Petition for Review*, as admitted in Par. 4, *Answer (To the Petition for Review dated May 31, 2019). Ibid.*

4 First Whereas Clause, Exhibit "P-12." *Id.* at pp. 102-103.

5 Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI). *Id.* at p. 535.

6 Exhibit "P-11." *Id.* at p. 101.

7 Exhibit "P-3." *Id.* at p. 81. Petitioner refers to the Letter as "dated January 24, 2019." However, such date is the filing date thereof with respondent DC-MICP.

On January 25, 2019, petitioner: 1) received from respondents, through electronic mail (e-mail), using the address micp@customs.gov.ph, a Notice to Claim the rice shipments covered by BL No. 550810053760;[8] and 2) sent a letter to respondent COC, praying that it be allowed to reclaim its rice shipments.[9]

On February 6, 2019,[10] petitioner, through its licensed customs broker, received respondent DC-MICP's Decree of Abandonment[11] dated January 28, 2019, in Abandonment Proceeding No. 109-2019, the pertinent portions of which reads:

> **WHEREAS**, shipment of 20x20' with Container Nos. BSIU3003778, BSIU3102256, DFSU1725844, DFSU1749342, DFSU1908953, DFSU1921600, FCIU5334886, FCIU5399742, FCIU5399911, FCIU5620180, FCIU5649693, GAOU2036810, GAOU2044441, SLSU2110100, TCLU7520316, TCLU7539672, TEMUI5666973, TEMU5801651, TEMU5802175 &TSLU0201703 stc: Pakistan IRRI-6 White Rice 5% Broken Double Silky Policy and Sortexed, arrived at this Port on August 20, 2018 from Pakistan on board the vessel 'M/V LODESTAR', covered by BL No. 550810053760 and declared under Entry No. C-281051-19, consigned to **SILVERRICE TRADING CORPORATION**;
>
> **WHEREAS**, the Entry was filed on October 12, 2018 and payment of duty and tax was made on October 22, 2018. However, the consignee for unknown reason failed to release the subject shipment within the prescribed period, which can only be construed as lack of interest on its part to claim the shipment and serves as waiver of its proprietary right thereon, thus, the same is deemed abandoned pursuant to Section 1129 (d) of the CMTA;
>
> **WHEREAS**, the Administrative Division, this Port, sent a Notice to Pay/Claim thru Electronic Mail (Email) to the above consignee. Attached herewith is the print-out copy of the said Notice;
>
>> Section 1129 (d) of the Customs Modernization and Tariff Act, provides:
>>
>> "*Sec. 1129. Abandonment, Kinds and Effects of.* - Imported goods are deemed abandoned under any of the following circumstances:

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[8] Exhibit "P-20." Docket (Vol. II), p. 592. Refer also to Par. 11, Stipulation of Facts, JSFI, Docket (Vol. I), p. 536.

[9] Par. 4, Stipulation of Facts, JSFI. Docket (Vol. I), p. 535. Exhibit "P-4." Docket (Vol. I), pp. 82-84.

[10] Par. 1.10, Petitioner's *Memorandum*, Docket (Vol. II), p. 801.

[11] Par. 5, Stipulation of Facts, JSFI, Docket (Vol. I), p. 535.

*xxx*

*(d) Having paid the assessed duties, taxes, and other charges, the owner, imported or consignee or interested party after due notice, fails to claim the goods within thirty (30) days from payment.*
*Xxx xxx xxx*

**WHEREFORE**, by virtue of the authority vested in me by law, the above-described shipment is hereby declared ABANDONED in favour of the government to be disposed of in the manner provided for by law.

Let a copies of this Decree of Abandonment be furnished all parties and offices concerned for their information and guidance

SO ORDERED.

MICP Customhouse, Philippines, January 28, 2019.[12]

Through Order[13] dated February 27, 2019, respondent DC-MICP denied petitioner's letter-appeal of January 11, 2019, as follows:

WHEREFORE, premises considered, by authority vested in me by law, the Decree of [A]bandonment are hereby AFFIRMED[,] covering the shipments without prejudice to claimant's right to appeal to the Customs Commissioner pursuant to Section 3 of CMO No. 18-2014 (Guidelines on Lifting [an] Order of Abandonment).

Let a copy of this Order be furnished all parties and Offices concerned for their information and guidance.

SO ORDERED.[14]

On May 3, 2019,[15] petitioner received respondent COC's Consolidated Order dated April 1, 2019,[16] affirming respondent DC-MICP's Order dated February 27, 2019, and Decree of Abandonment dated January 28, 2019,[17] in the following manner:

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12 Exhibit "P-12." *Id.* at pp. 102 to 103.

13 Respondent District Collector-MICP transmitted said Order to respondent COC for confirmation. See Par. 1.3.1, Petition for Review, as admitted in Par. 1, Answer (To the Petition for Review dated May 31, 2019). *Id.* at pp. 14 and 202, respectively.

14 Par. 1.3, Petition for Review, as admitted in Par. 1, Answer (To the Petition for Review dated May 31, 2019). *Ibid.*

15 Par. 8, Stipulation of Facts, JSFI. *Id.* at p. 535.

16 Exhibit "P-1." *Id.* at pp. 66 to 77.

17 Par. 6, Stipulation of Facts, JSFI. *Id.* at p. 535.

> **WHEREFORE**, premises considered, the Order dated 27 February 2019 of MICP District Collector affirming the Decree of Abandonment over the subject shipments is hereby **AFFIRMED**.
>
> **SO ORDERED.**[18]

On May 7, 2019, petitioner received[19] respondent COC's Resolution dated May 2, 2019,[20] approving the public auction of its rice shipments, covered by Abandonment Proceeding No. 109-2019, among others.[21] The dispositive portion of said Resolution states:

> **WHEREFORE**, premises considered, this Office **APPROVES** the request of the MICP District Collector for the public auction of the subject rice shipments covered by Decrees of Abandonment under Abandonment Proceedings Nos. 039-2019, 262-2018, 090-2019, 092-2019, 103-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019, 064-2019, 065-2019, 084-2019, 083-2019, 082-2019, 085-2019, 095-2019, 066-2019, 081-2019, 109-2019, 079-2019, 099-2019, 255-2019, 080-2019, 265-2018, 264-2018, 122-2019, 105-2019, 104-2019, 106-2019, **109-2019**, 110-2019, 119-2019, 108-2019, 109-2019, 247-2018, 118-2019, 119-2019, 130-2018, 120-2019, 117-2019, 125-2018, 124-2018, 121-2018, 231-2018, 097-2019, 260-2018, 244-2018, 084-2019, 085-2019, 095-2019, 083-2019, 228-2018.
>
> **SO ORDERED.**[22]

On May 3, 8, and 22, 2019, respondents posted in respondent BOC's website, a Notice of Public Auction, scheduling the public auction of petitioner's rice shipments on May 22, May 24 and May 27, 2019 respectively, at 10:00 a.m.[23] To date, said rice shipments have not been sold at public auction.[24]

On June 3, 2019, petitioner filed a Petition for Review, together with an application for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI),[25] to which respondents filed their Answer with Opposition thereto on July 26, 2019.[26]

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18 Exhibit "P-1." *Id.* at pp. 66 to 77.
19 Par. 9, Stipulation of Facts, JSFI. *Id.* at p. 536.
20 Exhibit "P-2." *Id.* at pp. 78 to 80.
21 Par. 7, Stipulation of Facts, JSFI. *Id.* at p. 535.
22 Boldfacing supplied.
23 Par. 10, Stipulation of Facts, JSFI. Docket (Vol. I), p. 536.
24 Par. 12, Stipulation of Facts, JSFI. *Ibid.*
25 *Id.* at pp. 12 to 63.
26 *Id.* at pp. 201 to 218.

On September 6, 2019, respondents filed through registered mail their Motion to Resolve Affirmative Defense,[27] to which petitioner filed its Comment / Opposition thereto on October 14, 2019.[28]

In the Hearing held on September 12, 2019,[29] the Court denied petitioner's application for the issuance of TRO and/or WPI embodied in its Petition for Review.

By Resolution dated November 22, 2019,[30] the Court denied respondents' Motion to Resolve Affirmative Defense.

On December 23, 2019, respondents filed their Motion for Reconsideration (to the Resolution dated November 22, 2019),[31] to which petitioner filed its Comment/Opposition thereto on January 15, 2020.[32]

In the Resolution dated February 11, 2020, the Court denied respondents' Motion for Reconsideration (to the Resolution dated November 22, 2019).[33]

On September 17, 2020, a Pre-Trial Conference was held, during which, respondents manifested that they would no longer present any evidence.[34]

On October 2, 2020, the parties filed through registered mail their Joint Stipulation of Facts and Issues,[35] which was approved by the Court in its Resolution dated November 6, 2020.[36]

On November 18, 2020, the Court issued a Pre-Trial Order.[37]

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27 *Id.* at pp. 239 to 242.
28 *Id.* at pp. 257 to 263.
29 Minutes of the hearing held on, and Order dated September 12, 2019. *Id.* at pp. 250 to 254.
30 *Id.* at pp. 275 to 282.
31 *Id.* at pp. 283 to 290.
32 *Id.* at pp. 294 to 300.
33 *Id.* at pp. 473 to 475.
34 Minutes of the hearing held on, and Order dated September 17, 2020. *Id.* at pp. 504 to 506, and 500 to 501, respectively.
35 *Id.* at pp. 534 to 540.
36 Docket (Vol. II), pp. 562 to 563.
37 *Id.* at pp. 574 to 581.

During trial, petitioner presented: (1) Ms. Racquel P. Ajoc;[38] and (2) Mr. Wally Maniego[39] as its witnesses.

On December 21, 2020, petitioner filed its Formal Offer of Evidence through e-mail,[40] to which respondents filed their comment thereto on January 8, 2021.[41]

Under Resolution dated March 4, 2021,[42] the Court admitted the pieces of evidence offered by petitioner, *except* for:

1. Exhibit "P-5," for failure to be identified by a competent witness;

2. Exhibits "P-6," "P-9," "P-10," "P-13," and "P-15," for failure to present the originals thereof for comparison and failure to identify; and

3. Exhibit "P-8," for failure to present the original thereof for comparison.

On the other hand, respondents manifested that they would not present evidence in this case.[43]

By Resolution[44] dated December 16, 2021, this case was submitted for decision, considering the filing of petitioner's Memorandum on May 24, 2021,[45] and the posting of respondents' Memorandum on June 17, 2021.[46]

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38 Exhibit "P-23." Docket (Vol. I), pp. 312 to 320; and Order dated November 19, 2020, Docket (Vol. II), pp. 646 to 647.
39 Exhibit "P-24." Docket (Vol. I), pp. 322 to 334; and Order dated December 10, 2020. Docket (Vol. II), pp. 659 to 663.
40 Docket (Vol. II), pp. 669 to 682.
41 *Id.* at pp. 713 to 720.
42 *Id.* at pp. 734 to 736.
43 Minutes of the hearing held on, and Order dated September 17, 2020, *supra* note 33; and par. 14, Stipulation of Facts, docket (Vol. I), p. 536.
44 Docket (Vol. II), p. 836.
45 *Id.* at pp. 738 to 766.
46 *Id.* at pp. 771 to 786.

## ISSUES

For resolution are: 1) whether respondent DC-MICP validly issued the Decree of Abandonment dated January 28, 2019; and 2) whether respondent COC's Consolidated Order dated April 1, 2019 and the Resolution dated May 2, 2019 should be reversed and set aside.[47]

## ARGUMENTS

Petitioner maintains that Section 1129 of the CMTA requires, among others, that notice to claim goods must be given to the owner, importer or consignee thereof before respondents may declare abandonment of said goods in favor of the government. For notices sent through e-mail, Customs Memorandum Order (CMO) No. 16-2019 states that proof of electronic service may either be: 1) acknowledgement of the owner, importer, consignee, or interested party; or 2) affidavit of the party serving the same. Since said acknowledgement or affidavit were not presented as evidence, respondents failed to validly serve through electronic means, the required notice to claim goods to petitioner. Hence, it was deprived of its mandated right to notice of the abandonment proceeding, rendering respondents' declaration of abandonment of its rice shipments in favor of the government null and void.

Respondents counter that petitioner's filing of the Petition for Review before the Court is offensive of the doctrine of exhaustion of administrative remedies. They explain that petitioner received respondent COC's Consolidated Order on May 3, 2019; thus, it had fifteen (15) days therefrom, or until May 18, 2019 to seek reconsideration of such Order as mandated by Section 114 of the CMTA, as interpreted in Customs Memorandum Order (CMO) No. 17-2019. Since petitioner failed to do so, its filing of the Petition for Review before the Court is premature.

Respondents retort that respondent DC-MICP's Decree of Abandonment dated April 1, 2019 was validly issued. So too is respondent COC's affirmance and approval thereof, through Consolidated Order dated April 1, 2019 and Resolution dated May 2,

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47 Stipulation of Issues, JSFI. Docket (Vol. I), p. 536.

*[signature]*

2019 proper. The reason being the notice to claim its rice shipments, received by petitioner through e-mail, was issued in accordance with Section 1129 of the CMTA and CMO No. 16-2019.

## OUR RULING

The Petition is denied.

First, the jurisdiction of the Court.

Section 7(a)(4) of RA No. 1125,[48] as amended by RA No. 9282 reads:

> Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ...
>
> 4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
>
> ...

Section 3(a)(4), Rule 4[49] of the Revised Rules of the Court of Tax Appeals (RRCTA)[50] states that appeals from the actions of respondent COC lies with the Court in Division. Additionally, Section 3, Rule 8[51]

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48 AN ACT CREATING THE COURT OF TAX APPEALS.

49 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

...

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

50 A.M. No. 05-11-07-CTA.

51 **SEC. 3.** *Who may appeal; period to file petition.* - (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments

of the RRCTA provides that the party aggrieved by the decision or ruling of respondent COC may appeal to the Court in Division within thirty (30) days from receipt thereof.

Petitioner received respondent COC's Consolidated Order on May 3, 2019.[52] Counting thirty (30) days therefrom, petitioner had until June 3, 2019[53] to file a Petition for Review before the Court. Hence, petitioner's Petition for Review was timely filed on June 3, 2019,[54] vesting the Court with jurisdiction over this case.

Respondents argue that petitioner violated the doctrine of exhaustion of administrative remedies because it failed to appeal said Consolidated Order to respondent COC within fifteen (15) days from receipt thereof, as required by Section 114[55] of the CMTA, as interpreted in CMO No. 17-2019.[56]

This is misleading.

Item No. 5 of CMO No. 17-2019 provides:

> 5. The Decision of the District Collector duly confirmed by the Office of the Commissioner shall become final and executory within fifteen (15) days from receipt by the owner/importer/consignee of the questioned Order/Decree/Decision unless appealed to the Commissioner in the manner and time specified in Section 114 of the CMTA, which

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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 a copy of such decision or ruling ....

52 *Supra* note 15.

53 The 30th day within which to file the Petition for Review fell on June 2, 2019, a Sunday. Hence, pursuant to Section 1, Rule 22 of the Rules of Court, as amended, the last day for petitioner to file its Petition for Review was on June 3, 2019, the next working day.

54 *Supra* note 26.

55 SEC. 114. *Right of Appeal, Forms and Ground.* - Any party adversely affected by a decision or omission of the Bureau pertaining to an importation, exportation, or any other legal claim shall have the right to appeal within fifteen (15) days from receipt of the questioned decision or order.

An appeal in writing shall be filed within the period prescribed in this Act or by regulation and shall specify the grounds thereof.

56 SUBJECT: GUIDELINES ON THE RECALL/LIFTING/RECONSIDERATION/SETTING ASIDE OF ANY ORDER/DECREE/DECISION OF ABANDONMENT

> allows appeal from any decision/omission of the Bureau pertaining to an importation, exportation, or any legal claim.

Contrary to respondents' posture, it is not respondent COC's Consolidated Order which is required to be appealed by petitioner. Rather, it is the Decree of Abandonment issued by respondent DC-MICP, as confirmed by respondent COC, which is required to be appealed by petitioner to respondent COC under CMO No. 17-2019.

Granting *arguendo* that petitioner failed to comply with Section 114 of the CMTA,[57] as interpreted in CMO No. 17-2019,[58] it is justified in doing so. To expound:

Under the doctrine of exhaustion of administrative remedies, a party must first avail of all administrative processes available before seeking the courts' intervention. The administrative officer concerned must be given every opportunity to decide on the matter within his or her jurisdiction. Failing to exhaust administrative remedies affects the party's cause of action as these remedies refer to a precedent condition which must be complied with prior to filing a case in court.[59] However, the doctrine is not an iron-clad rule for it admits of exceptions.[60]

Specifically, in *The Bureau of Customs, et al. v. Jade Bros. Farm and Livestock, Inc. (Jade Bros.),*[61] it was ruled that among the exceptions to the doctrine of exhaustion of administrative remedies are: *first,* further exhaustion would be an exercise in futility;[62] *second,* when there is unreasonable delay or official action leading to prejudice; and

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57 SEC. 114. *Right of Appeal, Forms and Ground.* - Any party adversely affected by a decision or omission of the Bureau pertaining to an importation, exportation, or any other legal claim shall have the right to appeal within fifteen (15) days from receipt of the questioned decision or order.

...

58 Item No. 5 of CMO No. 17-2019 states: "The Decision of the District Collector duly confirmed by the Office of the Commissioner shall become final and executory within fifteen (15) days from receipt by the owner/importer/consignee of the questioned Order/Decree/Decision unless appealed to the Commissioner in the manner and time specified in Section 114 of the CMTA, which allows appeal from any decision/omission of the Bureau pertaining to an importation, exportation, or any legal claim."

59 *Republic of the Philippines v. Felix,* G.R. No. 203371, June 30, 2020.

60 See *Ejera v. Merto, et al.,* G.R. No. 163109, January 22, 2014.

61 G.R. No. 246343, November 18, 2021.

62 See also *Commissioner of Customs v. Oilink International Corporation,* G.R. No. 161759, July 2, 2014.

*third,* absence of any plain, speedy and adequate remedy calls for immediate judicial intervention. These exceptions apply to petitioner.

For the *first* exception, respondent COC's Consolidated Order dated April 1, 2019[63] was received[64] by petitioner on May 3, 2019. Prior to petitioner's receipt thereof, respondent COC already issued a Resolution dated May 2, 2019,[65] approving the public auction of petitioner's rice shipments. To require petitioner to appeal said Consolidated Order would be futile, since even prior to petitioner's receipt thereof, respondent COC was bent on auctioning-off petitioner's abandoned rice shipments.

The *second* exception is also availing in this case. As claimed by respondents, petitioner's rice shipments arrived at the MICP on August 20, 2018.[66] Petitioner communicated with respondent DC-MICP on January 11[67] and 23,[68] 2019, and with respondent COC on January 25, 2019.[69] However, it was only on April 1, 2019, or after more than seven (7) months from the arrival of said rice shipments, did respondent COC issue the impugned Consolidated Order.[70] Owing to the nature of rice as a perishable commodity,[71] petitioner suffered prejudice by reason of respondents' unreasonable delay in acting on its rice shipments.

Anent the *third* exception, respondent BOC posted in its website the scheduled auction dates of petitioner's rice shipments on May 22, 24, and 27, 2019.[72] Auctioning-off such rice shipments is irretrievable and restitution thereof by respondents to petitioner is no longer possible. This necessitates urgent judicial intervention by the Court, who in turn may act on and enjoin the impending auction thereof by customs authorities. Indeed, under Section 1137 of the CMTA, "Except for the CTA, no court may issue any order or decision until all the remedies for administrative appeal have been exhausted."

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63 *Supra* note 16.
64 *Supra* note 15.
65 *Supra* note 20.
66 *Supra* note 4.
67 *Supra* note 6.
68 *Supra* note 7.
69 *Supra* note 9.
70 *Supra* note 16.
71 In *Jade Bros., supra* note 59, the Supreme Court further ruled that rice is considered perishable goods.
72 *Supra* note 23.

In fine, petitioner sought immediate recourse to the Court, and rightfully so.

Now, the merits of this case. The pertinent portions of Section 1129 of the CMTA read:

> SEC. 1129. *Abandonment, Kinds and Effect of.* – **Imported goods are deemed abandoned under any of the following circumstances:**
>
> ...
>
> (d) **Having paid the assessed duties, taxes and other charges, the owner, importer or consignee or interested party after due notice, fails to claim the goods within thirty (30) days from payment.** For this purpose, the arrastre or warehouse operator shall report the unclaimed goods to the District Collector for disposition pursuant to the provisions of this Act; or
>
> ...
>
> **The due notice requirement under this section may be provided by the Bureau through electronic notice or personal service**: *Provided*, That for non-regular importers, notification shall be by registered mail or personal service. For this purpose, the accreditation of importers, exporters, and other third parties shall include provision for mandatory receipt of electronic notices.[73]

To set Section 1129(d) of the CMTA in motion, the following conditions must concur: *one*, the assessed duties, taxes, and other charges were paid by the owner, importer, consignee, or interested parties on the imported goods; *two*, due notice by the customs authorities to claim such goods must be served upon the owner, importer, consignee, or interested parties thereof; and *three*, the owner, importer, consignee, or interested parties failed to claim said goods within thirty (30) days from payment of assessed duties, taxes, and other charges. These conditions were met in this case. Bear in mind:

*First*, on October 22, 2018, petitioner paid the duties and taxes on its rice shipments amounting to ₱3,913,444.00.[74]

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73 Boldfacing supplied.

74 *Supra* note 5.

*Second,* on January 25, 2019, petitioner received from respondents, an e-mail using the address *micp@customs.gov.ph,* containing a Notice to Claim the rice shipments covered by covered by BL No. 550810053760.[75]

Petitioner contends that said e-mail notice is invalid since it did not acknowledge the receipt thereof, nor did respondents present an affidavit of the party serving the same, as required by CMO No. 16-2019.

The contention is specious.

True, CMO No. 16-2019[76] laid down the circumstance when electronic service is complete, as well as the corresponding proof required for electronic service of notice to claim imported goods in abandonment cases, as follows:

> 6.... Electronic service is complete upon successful sending of a notice via internet to the designated e-mail address of the owner importer, importer, and consignee, or interested party.
>
> 7.... Proof of electronic service shall [be] made by the acknowledgement of the owner, importer, consignee, or interested party served, or by such affidavit of the party serving the same.

Yet, CMO No. 16-2019 was dated March 18, 2019 and was signed by respondent COC only on March 25, 2019. No retroactive application was expressly stated in said issuance. Hence, it cannot be made to apply on respondents' Notice to Claim the rice shipments sent through e-mail using the address *micp@customs.gov.ph* received by petitioner on January 25, 2019. To stress, "... statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based

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75 Exhibit "P-20." Docket (Vol. II), p. 592; Refer also to Par. 11, Stipulation of Facts, JSFI, docket (Vol. I), p. 536.

76 Subject: GUIDELINES ON THE SENDING OF NOTICE UNDER SECTION 1129 (ABANDONMENT, KINDS AND EFFECTS) OF THE CMTA

on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward)." [77]

Besides, petitioner's witness Racquel P. Ajoc declared that on January 25, 2019, petitioner received the Notice to Claim the rice shipments covered by BL No. 550810053760 e-mailed by respondents, thereby demonstrating the completeness of electronic service, and proof thereof, pursuant to CMO No. 16-2019, as well as Section 1129 of the CMTA, thus:[78]

> **Q6: What is the registered e-mail address of the Company with the Bureau of Customs?**
>
> **A6: The registered e-mail address of the Company with the Bureau of Customs is wengsadincon@yahoo.com**
>
> **Q7: Is this the e-mail address used by the Company in its official dealings with the Bureau of Customs?**
>
> **A7: Yes.** It is the e-mail address registered by the Company in the Electronic to Mobile ('E2M') System of the Bureau of Customs. I was the one who processed the renewal of the Company's registration in the Client Profile Registration System ('CPRS') of the Bureau of Customs.
>
> ...
>
> Q9: Who has access to this registered e-mail address?
>
> A9: The company president, Mrs. Rowena Del Rosario-Sadicon, and myself.
>
> ...
>
> Q12: When did the rice shipment arrive?
>
> A12: The rice shipment covered by Bill of Lading No. 550810053760 from Pakistan arrived last 20 August 2018.
>
> **Q13: Did you receive any e-mail from the Bureau of Customs from August up to present regarding this rice shipment?**
>
> **A13: Yes. I received e-mails dated 25 January 2019,** 19 February 2019 and 5 March 2019.

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77 *Republic of the Philippines v. Larrazabal, Sr., et al.*, G.R. No. 204530, July 26, 2017; and *BPI Leasing Corporation vs. The Honorable Court of Appeals, et al.*, G.R No. 127624, November 18, 2003.

78 Exhibit "P-20." Docket (Vol. II), p. 592; Refer also to Par. 11, Stipulation of Facts, JSFI. Docket (Vol. I), p. 536.

> Q14: Prior to 25 January 2019, did you receive any e-mails regarding this rice shipment?
>
> A14: No.
>
> **Q15: What was the content of this e-mail dated 25 January 2019?**
>
> **A15: It was a notice to claim the rice shipment covered by Bill of Lading No. 550810053760, otherwise it shall be deemed abandoned.**
>
> ...
>
> Q20: What did you do after receiving said e-mails?
>
> A20: I immediately informed Mrs. Rowena Del Rosario-Sadicon.[79]

In any event, the Court notes Customs Administrative Order (CAO) No. 17-2019,[80] issued by respondent COC, which states that "[n]otwithstanding their failure to acknowledge duly sent notices and communications to the accredited importer's registered electronic mail address, the same shall be deemed received upon successful transmittal thereof."

Though CAO No. 17-2019 was yet to be issued at the time the Notice to Claim the rice shipments sent through e-mail using the address *micp@customs.gov.ph* was received by petitioner on January 25, 2019, the subsequent issuance thereof fortifies the conclusion that electronic service was indeed complete by the successful sending of respondents' Notice to Claim the rice shipments covered by BL No. 550810053760 to petitioner's registered e-mail address, despite the latter's failure to acknowledge the same.[81]

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79 Exhibit "P-23." Docket (Vol. I), pp. 314 to 315, and 317.

80 SUBJECT: ABANDONMENT: KINDS, EFFECTS, AND TREATMENT. Signed by respondent COC on October 29, 2019, and by the Secretary of Finance on November 18, 2019.

81 In *Commissioner of Internal Revenue v. T-Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020, the Supreme Court considered the information contained in Revenue Memorandum Order No. 40-2019, despite such issuance's non-existence at the time the Preliminary Assessment Notice and Final Assessment Notice were issued against the taxpayer therein for purposes of consistency and uniformity, as follows: "While RMO 40-2019 was not yet in force at the time the questioned PAN and FAN in the case were issued, the fact of such subsequent issuance of RMO 40-2019 by the CIR gives the Court all the more reason to affirm, if only for consistency and uniformity, the CTA En Banc's finding that the CIR failed to prove that the PAN and the FAN were properly and duly served upon and received by respondent...."

*Third,* with the presence of due notice to petitioner, the latter has thirty (30) days from payment of taxes and duties on its rice shipments on October 22, 2018,[82] or until November 21, 2018, to claim such rice shipments. In relation to goods, claim is defined as the "means by or through which claimant obtains possession or enjoyment of privilege or thing."[83] No such claim was made by petitioner on its rice shipments.

All told, respondent DC-MICP's Decree of Abandonment dated January 28, 2019, as affirmed by respondent COC's Consolidated Order dated April 1, 2019 were issued in consonance with Section 1129 of the CMTA. Being so, respondent COC's Resolution dated May 2, 2019, approving the public auction of the rice shipments abandoned by petitioner is as well warranted.

**WHEREFORE**, the Petition for Review dated May 31, 2019, filed by Silverice Trading Corporation is **DENIED**, for lack of merit.

**SO ORDERED.**

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

We Concur:

I concur, without prejudice to application of Section 1130, CMTA.
**ROMAN G. DEL ROSARIO**
Presiding Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

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82 *Supra* note 5.

83 Black's Law Dictionary, Revised Fourth Edition, West Publishing Co. (1968), p. 313.

## CERTIFICATION

Pursuant to Section 13 of 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's Division.

**ROMAN G. DEL ROSARIO**
Presiding Justice