

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

JADE BROS FARM AND
LIVESTOCK, INC.,

Petitioner,

-versus-

CTA CASE NO. 8886

Members:

BAUTISTA, Chairperson

FABON-VICTORINO, and

RINGPIS-LIBAN, II.

BUREAU OF CUSTOMS AND THE
COMMISSIONER OF CUSTOMS,

Respondents.

Promulgated:

JUN 20 2016

C.E. 11:24 a.m.

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R E S O L U T I O N

For resolution are:

1. Respondents' "Motion for Reconsideration" ("MR") filed on April 12, 2016; with petitioner's "Opposition [Re: Motion for Reconsideration dated 11 April 2016]" ("Opposition to MR") filed on May 10, 2016, with attached "Pre-Trial Order;" and respondents' "Reply (to Opposition [Re: Motion for Reconsideration dated April 11, 2016])" ("Reply to Opposition") filed on May 31, 2016; and

2. Petitioner's "Ex Parte Motion for Leave to Admit Attached Reply," with attached "Reply [Comment (on Motion for Partial Reconsideration) dated 28 April 2016]," filed on May 16, 2016.

On March 23, 2016, the Court resolved several pending incidents, including finding no reason to delete Mr. Emmanuel A. Santos from the list of witnesses and to strike his Judicial Affidavit ("JA") and Supplementary JA off the records; and ordering petitioner to pay a total of Php10,000.00 for two instances of non-compliance with the JA Rule.

Respondent's Motion for Reconsideration – forum shopping

On April 12, 2016, respondents filed the above MR claiming that the Court evaded the issue of forum shopping, which they have raised time and again their pleadings, hence, respondents are unable to agree to the manner in which the Court intends the case to proceed; that petitioner essentially seeks for the RTC to nullify *NFA Memorandum Circular No. AO-2K13-03-003* ("*NFA Memorandum Circular*"), rule that respondents have no authority to require import permits prior to importation of rice, and rule that the Bureau of Customs ("*BOC*") should be perpetually enjoined from seizing its rice shipments; that in their Answer, respondents argued that the present Petition should be dismissed since it has been rendered moot by the auction of the rice shipments and petitioner committed forum shopping; that the only remaining prayer is to declare the importations as legal, which is the same as one of the prayers in the RTC case; that the issues in the RTC case and the present case are identical, which is evident in the arguments of petitioner and in the evidence presented in the RTC and intended to be presented in the present case; that petitioner invokes the Court to decide on the basis, among others, of the alleged expiration of the special treatment on rice shipments under the *WTO Agreement*, which was also earlier invoked by petitioner in the RTC case; that petitioner argued in both cases that the *NFA Memorandum Circular* is void for not being filed with the UP Law Center; and that petitioner intends to present the same JAs of witnesses it presented in the RTC case for the same purposes.

Respondents insist that there is forum shopping in this case since the elements of *litis pendentia* are present; that the first action filed with the RTC should be retained and the second one filed with the Court be dismissed; that the Court has no jurisdiction to resolve the issues already brought before the RTC; and that the Court should await the resolution of the RTC with respect to the issues within the latter's competence, otherwise, there will be a duplication of proceedings.

Respondents pray for the Court to reconsider its March 23, 2016 Resolution; to defer to the competence of the RTC to decide on issues pertaining to the alleged expiration of the special treatment on rice and the validity of the *NFA Memorandum Circular*; to decline to receive evidence pertaining to the above issues; and to await final resolution of the RTC on the issues before ruling on the validity of respondents' actions.

On April 14, 2016, the Court ordered petitioner to comment on respondents' MR within 10 days from notice.

On May 10, 2016, petitioner filed its Opposition to MR in which it avers that the allegations of respondents are mere reiterations of their previous erroneous and baseless arguments; that it has more than sufficiently addressed respondents' claims in its previous pleadings and papers; and that to further refute the same, petitioner filed the present Opposition to MR.

Petitioner asserts that the issue raised in the present case are completely different from those raised in the RTC case; that the main issue in the RTC case is the validity of the *NFA Memorandum Circular* and will not touch upon the legality of the seizure and forfeiture of petitioner's rice shipments; that the same is reflected in the Pre-Trial Order in the RTC Case; that the RTC case is a Petition for Declaratory Relief questioning the legality of the *NFA Memorandum Circular*, while the present case is a Petition for Review under the *CTA Rules of Procedure*; that though the RTC case initially had prayers for the issuance of injunctive writs to protect petitioner's interests, the same were already withdrawn; that the present case is based on the CTA's jurisdiction to review the decisions of the Commissioner of Customs in cases involving seizure, detention, or release of property affected and for the CTA to review the actions of respondents as regards the forfeiture of the rice shipments; that the Petition for Review did not include any prayer for the declaration of illegality of the *NFA Memorandum Circular*; and that, in fact, the CTA has no jurisdiction to declare the *NFA Memorandum Circular* as an invalid issuance.

Hence, petitioner claims that the present case and the RTC case involve different issues and cannot be a basis of respondents' claim of forum shopping; that the *NFA Memorandum Circular* was only raised in the CTA case since respondents used it as basis in classifying the shipments as illegal and to give the Court a complete picture of the events surrounding the acts of respondents; that the illegality of the *NFA Memorandum Circular* is not the only basis of petitioner in questioning the actions of respondents; and that also raised are the invalidity of the notices pertaining to the auction and respondents' violation of the *Tariff and Customs Code* and the *BOC's Regulations*.

Lastly, petitioner asserts that forum shopping does not apply since a resolution on either of the cases will not result to *res judicata* on the other case.

On May 31, 2016, respondents filed their Reply to Opposition, in which they counter that if petitioner's contentions are correct, there is no legal basis for petitioner to present evidence that tends to prove that the said *NFA Memorandum Circular* is invalid; that petitioner presented the JA of Atty. Flordeliza Vargas-Trinidad, which was likewise submitted by petitioner in the RTC case to prove the invalidity of the *NFA Memorandum Circular*; that presenting the said JA is tantamount to asking the Court to see the "invalidity" of the said *NFA Memorandum Circular*, amounting to a collateral attack on the same, which is not allowed; that the Court cannot rule on the validity of respondents' acts that are based on the *NFA Memorandum Circular* absent any final ruling of its invalidity; that the JA is evidence on collateral matters that is not allowed by the *Revised Rules of Evidence*; that the expiration of the special treatment on rice shipments granted under the *WTO Agreement* is not within the jurisdiction of the court; that the actions of respondents based on the special treatment of rice is only a collateral matter; and that to allow the presentation of evidence on collateral matters would amount to *litis pendentia*.

Respondents reasoned that petitioner's prayer for the declaration of the importation as legal would entail a decision on the validity of the *NFA Memorandum Circular* and on whether the special treatment already expired at the time of importation, which allegedly resulted to the lack of authority on the part of the NFA to require a permit prior to importation – the very same issues raised before the RTC. Hence, petitioner committed forum shopping in filing the present case with the Court.

On June 6, 2016, the Court found no genuine issue of fact in the case, set aside its Resolution dated February 10, 2016 denying petitioner's prayed for summary judgment, and submitted the case for summary judgment. As to the issue of forum shopping, the Court ruled in this wise:

There is an additional issue which, according to the respondents, is a genuine question of fact calling for the presentation of evidence. According to the respondents, petitioner is guilty of forum shopping by filing the instant Petition while a complaint for declaratory relief filed by the

petitioner, involving the same facts and circumstances, is pending before the Regional Trial Court of Manila.

The facts on record, leading to the seizure of the rice shipments, forfeiture, and auction, are adequately presented by both parties in the proceedings. Undisputed are the facts that petitioner's rice shipments are not covered by an import permit and that respondents seized, forfeited and eventually auctioned off the goods. In bulk, these facts are those that have been alleged in the pleadings of the parties and stipulated upon, and have a direct bearing upon the issues. The parties only differ as to the applicable laws. Petitioner believes that it has the right to import rice without an import permit under the circumstances. Respondents, on the other hand, believe that the rice may only be legally imported if the importer legally secured an import permit beforehand.

As to the additional issue of forum shopping, the existence and pendency of the special civil action for declaratory relief before the Regional Trial Court of Manila was also admitted. The pendency of this case was, in fact, spelled out in the Verification and Certification of Non-Forum Shopping that accompanied the Petition when the instant case was filed. However, petitioner disputes this claim of forum shopping by saying that the action for declaratory relief is a remedy far removed from this case, and that no *res judicata* will ever result from a ruling in this case on the other case and *vice-versa*.

In their Comment, respondents cited several examples of petitioner's allegations which, according to them, required a determination of facts in a full blown trial, to wit: that petitioner's rice shipments were imported after the special treatment has already expired so that there was no need to secure an import permit from the NFA prior to importation; that petitioner's rice shipment are not illegal importation; that the public auction of petitioner's shipments was not in accordance with law; that the notices pertaining to the auction of petitioners rice shipments are invalid; that respondents violated the Tariff and Customs Code as well as the Bureau of Customs Regulations; that the release of the rice shipments is most advantageous to the government, as opposed to its auctioning; and that there was no misdeclaration or fraud attendant to the importation of its rice shipments. These statements, according to respondents, are issues of fact that negate the applicability of a summary judgment.

In retrospect of these matters, and going back to the issues raised in the Pre-Trial Order, the Court rules that there is no genuine issue of fact in the case, and that there is enough evidence on record to present these issues for submission, including the issue of forum shopping subsequently raised by respondents.

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Finding no genuine issue of fact in the case, petitioner's "Motion for Reconsideration (Re: Resolution dated 10 February 2016)" is hereby **GRANTED**. Consequently, the Court hereby sets aside its Resolution dated February 10, 2016 and the case is hereby submitted for summary judgment.

WHEREFORE, both parties are directed to submit all their respective supporting affidavits bolstering their contentions in the issues raised in the Pre-Trial Order within thirty (30) days from receipt of this Resolution. Within fifteen (15) days from receipt of the parties' supporting affidavits, or in default of such receipt, the lapse of the thirty (30) day period, the parties are directed to simultaneously file their opposing affidavits and respective memoranda, if desired. Thereafter, this case will be submitted for decision.

Petitioner's Motion for Partial Reconsideration – Php5,000.00 fine

On April 5, 2016, petitioner filed its "Motion for Partial Reconsideration [Re: Resolution dated March 23, 2016]" ("Motion"); with respondents' "Comment (on Motion for Partial Reconsideration [Re: Resolution dated March 23, 2016])" ("Comment") filed on April 28, 2016.

On May 11, 2016, the Court granted petitioner's Motion due to the finding that the subject JA of Mr. Emmanuel A. Santos was indeed filed on June 4, 2015, instead of the date June 24, 2015 stated in the assailed March 23, 2016 Resolution. Counting from June 9, 2015, the JA was correctly filed on June 4, 2015, exactly five (5) days before the Pre-Trial Conference. Hence, the fine of Php5,000.00 for the late filing of the JA of petitioner's witness Mr. Emmanuel A. Santos for non-compliance with the JAR was cancelled and set aside.

On May 16, 2016, petitioner filed the present "*Ex Parte* Motion for Leave to Admit Attached Reply," with attached "Reply [Comment (on Motion for Partial Reconsideration) dated 28 April 2016]."

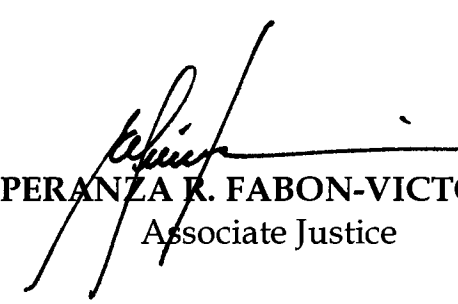
ACCORDINGLY, respondents' "Motion for Reconsideration" is hereby **DENIED**. In view of the June 6, 2016 Resolution of the Court including the issue of forum shopping as one of the issues submitted for summary judgment, the Court hereby reiterates its order, as follows:

WHEREFORE, both parties are directed to submit all their respective supporting affidavits bolstering their contentions in the issues raised in the Pre-Trial Order within thirty (30) days from receipt of this Resolution. Within fifteen (15) days from receipt of the parties' supporting affidavits, or in default of such receipt, the lapse of the thirty (30) day period, the parties are directed to simultaneously file their opposing affidavits and respective memoranda, if desired. Thereafter, this case will be submitted for decision.

Lastly, considering the May 11, 2016 Resolution of the Court granting petitioner's Motion, its "*Ex Parte* Motion for Leave to Admit Attached Reply," with attached "Reply [Comment (on Motion for Partial Reconsideration) dated 28 April 2016]," is hereby rendered **MOOT** and **ACADEMIC**.

SO ORDERED.


LOVELL R. BAUTISTA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice