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

## *FIRST DIVISION*

**STA. ROSA FARM PRODUCTS CORPORATION**,
*Petitioner*,

-*versus*-

**COMMISSIONER OF CUSTOMS**,
*Respondent*.

**CTA Case No. 9932**

Members:

**DEL ROSARIO**, *P.J., Chairperson, and*
**MANAHAN**, *JJ.*

Promulgated:
FEB 03 2021 10:34 am

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## DECISION

**MANAHAN, *J.*:**

This case involves a *Petition for Review* filed by petitioner Sta. Rosa Farm Products Corporation against respondent Commissioner of Customs on September 21, 2018, praying that the Court render judgment ordering respondent to set aside the assailed Decision dated August 16, 2018, and to refund the costs of petitioner's rice importations forfeited by the Bureau of Customs (BOC) in the three (3) forfeiture cases and sold in public auction amounting to ₱112,874,700.00.[1]

### THE FACTS

Petitioner Sta. Rosa Farm Products Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Ground Floor Doña Rosita Building, 2025-2031 Ipil Street, Sta. Cruz, Manila, and represented in this case by its President, Mr. Jomerito S. Soliman.[2]

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[1] Statement of the Case, Pre-Trial Order dated July 18, 2019, Docket – Vol. I, p. 643.
[2] Par. 4, *Petition for Review*, *vis-à-vis* Par. 3, *Answer*, Docket – Vol. I, pp. 11 and 80, respectively.

Respondent Commissioner of Customs is the Head of the BOC, a government agency under the Department of Finance (DOF), with office address at the Office of the Commissioner (OCOM), BOC, Port Area, Manila.[3]

On several dates in May 2018, three (3) shipments totaling 150x20' containers STC 75,000 bags white rice 5% broken Red Stallion Brand, consigned to petitioner, arrived at the Manila International Container Port (MICP) as follows:[4]

| B/L No. | Import Entry No. | Date |
|---|---|---|
| GTD0403844 | C-132552-18 | 20 May 2018 |
| GM0403498 | C-132955-18 | 21 May 2018 |
| EGLV050800430758 | C-133722-18 | 22 May 2018 |

In its letter dated June 4, 2018, petitioner asked the National Food Authority (NFA) for its assistance and approval allowing the former to process the release of the aforesaid shipments.[5]

On June 13, 2018, various customs officers in MICP, namely: Mr. Greg Serrano, COO III, Mr. Terencio Comon, COO V, Mr. Ronald Gabriel T. Reyes, OIC Formal Entry Division, and Mr. Fidel Villanueva IV, Deputy Collector for Operations, issued Reports of Seizure against the subject shipments for alleged lack of NFA Import Permits prior to importation. Specifically, as alleged in the Reports, the cause of seizure was "LACK OF NFA IMPORT PERMIT PRIOR TO IMPORTATION IN RELATION TO SECTION 1113 OF CMTA".[6] These Reports were approved by Atty. Vener S. Baquiran, District Collector, MICP, who issued the corresponding *Warrants of Seizure and Detention* against the subject shipments.[7] CMTA refers to the Customs Modernization and Tariff Act which superseded the the Tariff and Customs Code of the Philippines.

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[3] Par. 5, *Petition for Review*, vis-à-vis Par. 3, *Answer*, Docket – Vol. I, pp. 11 and 80, respectively.
[4] Par. 1.1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 620.
[5] Exhibit "P-23", Docket – Vol. II, p. 841.
[6] Par. 1.2, Stipulated Facts, JSFI, Docket – Vol. I, p. 620.
[7] Par. 1.3, Stipulated Facts, JSFI, Docket – Vol. I, p. 621. om

Petitioner then appealed to respondent the said seizure of the subject shipment, through the letter dated June 14, 2018.[8]

On June 27, 2018, a preliminary conference for the seizure proceedings was held, wherein the government prosecutor and the counsels for the petitioner appeared. The parties agreed for the consolidation of the seizure proceedings since they involved the same parties, issues, and violations.[9]

During the said conference, the prosecution presented and marked the evidence enumerated below:[10]

| Exhibit | S.I. No. 047-2018 |
|---|---|
| "1" | SAD C-133722 composed of 2 pages with dorsal portion |
| "2" | Certificate of Weight and Inspection of the Quality of Rice |
| "3" | Phytosanitary Certificate |
| "4" | Certificate of Origin |
| "5" | SPS Import Clearance consisting of 2 pages |
| "6" | Packing List |
| "7" | Invoice No. CN 190399 |
| "8" | Bill of Lading No. 050800430758 |
| "9" | Revised Supplemental Declaration on Valuation |
| "10" | Document Processing Time Form |
| "11" | Temporary Assessment Notice |
| "12" | Report of Seizure |
| "13" | Warrant of Seizure and Detention (WSD) No. 047-2018 |
| "14" | Fumigation Certificate |

| Exhibit | S.I. No. 048-2018 |
|---|---|
| "1" | SAD C-132552 |
| "2" | Plant Quarantine Service – DA Border Inspector's Report consisting of 3 pages |

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[8] Exhibit "P-24", Docket – Vol. II, pp. 842 to 843.
[9] Par. 1.4, Stipulated Facts, JSFI, Docket – Vol. I, p. 621.
[10] Par. 1.5, Stipulated Facts, JSFI, Docket – Vol. I, pp. 621 to 622.

| | |
|---|---|
| "3" | Phytosanitary Certificate |
| "4" | SPS Import Clearance consisting of 2 pages |
| "5" | Certificate of Weight and Inspection of the Quality of Rice |
| "6" | Certificate of Origin |
| "7" | Bill of Lading No. GTD0403844 |
| "8" | Packing List |
| "9" | Invoice No. CN190401 |
| "10" | Revised Supplemental Declaration on Valuation |
| "11" | Document Processing Time Form |
| "12" | Temporary Assessment Notice |
| "13" | Report of Seizure |
| "14" | WSD No. 048-2018 |
| "15" | Fumigation Certificate |

| Exhibit | S.I. No. 049-2018 |
|---|---|
| "1" | SAD C-132955 |
| "2" | Department of Agriculture – DA Border Inspector's Report |
| "3" | SPS Import Clearance |
| "4" | Fumigation Certificate |
| "5" | Certificate of Weight and Inspection of the Quality of Rice |
| "6" | Certificate of Origin |
| "7" | BL No. GTD0403498 |
| "8" | Packing List Bill of Lading No. 050800430758 |
| "9" | Invoice No. CN 190402 |
| "10" | Revised Supplemental Declaration on Valuation |
| "11" | Document Processing Time Form |
| "12" | Temporary Assessment Notice |
| "13" | Report of Seizure |
| "14" | WSD No. 047-2018 |

Petitioner's counsels adopted the aforesaid prosecution's evidence as its exhibits, except for Document Processing Time Form, Report of Seizure and Warrant of Seizure and Detention (WSD). In addition, the following exhibits were marked for petitioner, to wit:[11]

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[11] Par. 1.6, Stipulated Facts, JSFI, Docket – Vol. I, pp. 622 to 623.

| Exhibit | Description |
|---|---|
| "K" | News report in Philippine Star |
| "L" | News report in politics.com.ph |
| "M" | News report in Philippine Star |
| "N" | News report in GMA News Center |
| "O" | News report in CNN dated 23 April 2018 |
| "P" | News report in ABS CBN News Online |
| "Q" | News report in Mania Times Online |
| "R" | Letter of Mr. Jomerito Soliman, petitioner's President, to NFA Administrator dated 30 April 2018 |
| "S" | Letter dated 2 May 2018 of Mr. Soliman to the President, thru Secretary Bong Go; to Secretary of DOF; and to respondent |
| "T" | Letter of Mr. Soliman to DOF dated 2 May 2018, copy furnished Department of Agriculture (DA) and BOC. |
| "U" | Adm. Order of NFA to be signed by the President |
| "V" | Letter of Mr. Soliman to the President, through Secretary Bong Go |
| "W" | Letter to NFA Administrator by petitioner |
| "X" | Letter to NFA Administrator dated 4 June 2018 |
| "Y" | Letter dated 14 June 2018 to respondent, copy furnished the President, through Secretary Bong Go and NFA Administrator |

Thereafter, petitioner submitted its *Consolidated Verified Position Paper* on July 4, 2018, putting forward the following claims: (a) the subject importations may be released by payment of proper duties and charges considering that the President of the Philippines has already lifted the rice import quota; and (b) the subject shipments may be released conditionally by payment of proper duties and taxes and 30% fine pursuant to Section 1124 of the CMTA.[12]

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[12] Par. 1.7, Stipulated Facts, JSFI, Docket – Vol. I, p. 623.

On July 12, 2018, the prosecution submitted its *Comment to the Position Paper* which argued that: (a) the Position Paper is a mere scrap of paper because the prosecution was not furnished a copy; (b) the subject shipments are regulated importations covered by existing NFA rules and regulations; and, (c) the release of the subject shipments by way of settlement is contrary to law.[13]

Petitioner then informed the NFA of such seizure proceedings through the letter dated July 13, 2018.[14] The NFA replied via the letter dated July 17, 2018 that it has no existing guidelines/policy on the importation of rice outside of the Minimum Access Volume (MAV) or out-quota as of the said date.[15]

On July 13, 2018, the District Collector, MICP, issued the *Consolidated Order* directing the forfeiture of the subject shipments in favor of the government.[16] Through its Letter dated July 16, 2018, however, petitioner disputed the said forfeiture and objected to the scheduled public auction of the subject rice importations.[17]

On July 17, 2018, the subject shipments of rice were sold at public auction.[18] The results thereof are as follows:[19]

a. For Sale Lot No. 7-021-2018

   Highest bid price by Mangga Multi-Purporse Cooperative - ₱44,500,000.00

b. For Sale Lot No. 7-022-2018

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[13] Par. 1.8, Stipulated Facts, JSFI, Docket – Vol. I, p. 623.
[14] Exhibit "P-26", Docket – Vol. II, pp. 859 to 860.
[15] Exhibit "P-27", Docket – Vol. II, p. 895.
[16] Par. 1.9, Stipulated Facts, JSFI, Docket – Vol. I, p. 623.
[17] Exhibit "P-11", BOC Records – Envelope 1, pp. 141 to 142.
[18] Par. 1.10, Stipulated Facts, JSFI, Docket – Vol. I, p. 623; *cf*: Exhibits "P-25" and "P-25-A", Docket – Vol. II, pp. 852 to 858.
[19] Exhibit "P-25-A", Docket – Vol. II, pp. 856 to 858; Par. 1.11, Stipulated Facts, JSFI, Docket – Vol. I, pp. 623 to 624.

Highest bid price by JSP Rice Mill - ₱44,300,000.00

c. For Sale Lot No. 7-023-2018

Highest bid price by Manna Consumer - ₱44,302,000.00

In the letter dated July 27, 2018, petitioner's President, Mr. Jomerito Soliman, requested the NFA Administrator for another letter clarifying that the previous Letter dated July 13, 2018 is intended as an authorization for the BOC to process the subject out-quota rice importations provided the proper out-quota tariff rates are paid and collected by the BOC.[20]

In the Letter dated July 27, 2018, the NFA Administrator clarified that: "From the foregoing, the out-quota importation of Sta. Rosa Farm Products may well be within the abovementioned Presidential Directive, provided that the importer will pay the tariff rate of 50% as imposed by the BOC."[21]

Respondent then filed criminal complaints for smuggling against petitioner.[22]

In his Decision dated August 16, 2018, respondent affirmed the *Consolidated Order* dated July 13, 2018 of the District Collector, MICP.[23] Respondent ruled that the subject rice shipments require Import Permits from the NFA; and that forfeiture of the subject shipments of rice is proper.

On September 21, 2018, petitioner filed the instant *Petition for Review*,[24] assailing respondent's Decision dated August 16, 2018.

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[20] Par. 1.13, Stipulated Facts, JSFI, Docket – Vol. 1, p. 624; Exhibit "P-29", Docket – Vol. II, pp. 936 to 937.

[21] Par. 1.14, Stipulated Facts, JSFI, Docket – Vol. I, p. 624; Exhibit "P-30", Docket – Vol. II, pp. 938 to 939.

[22] Par. 1.15, Stipulated Facts, JSFI, Docket – Vol. I, p. 624.

[23] Refer to Par. 2, *Petition for Review*, *vis-à-vis* Par. 1, *Answer*, Docket – Vol. I, pp. 10 and 80, respectively. Refer also to Annex "A", *Petition for Review*, Docket – Vol. I, pp. 47 to 56.

[24] Docket – Vol. I, pp. 10 to 46.

Respondent filed his *Answer* on December 4, 2018,[25] relying on NFA Memorandum Circular No. AO-2017-08-002 dated August 4, 2017, in relation to Republic Act No. 8178 (Agricultural Tariffication Act), and Customs Memorandum Order (CMO) No. 20-2001 dated August 27, 2001 to bolster his position that the subject importations require prior import permits.

This case was then referred for mediation and its proceedings were suspended, pursuant to the Resolution dated January 16, 2019.[26] However, the Court received a *No Agreement to Mediate* on February 11, 2019.[27]

Hence, the Pre-Trial Conference was initially set on March 21, 2019.[28] Upon motion of respondent,[29] however, the Pre-Trial Conference was reset to, and held on, May 16, 2019.[30] Prior thereto, petitioner's *Pre-Trial Brief* was filed on March 15, 2019,[31] while respondent's *Pre-Trial Brief* was submitted on March 19, 2019.[32]

The Court received the BOC's *Records* for the instant case on May 22, 2019.[33]

The parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on May 31, 2019.[34] The Court approved the same and deemed the termination of the Pre-Trial, in the Resolution dated June 13, 2019.[35] The Pre-Trial Order was issued on July 18, 2019.[36]

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[25] Docket – Vol. I, pp. 80 to 100.
[26] Docket – Vol. I, pp. 142 to 143.
[27] Docket – Vol. I, p. 144.
[28] Resolution dated February 22, 2019, Docket – Vol. I, p. 154; *Notice of Pre-Trial Conference* dated March 7, 2019, Docket – Vol. I, pp. 155 to 156.
[29] *Urgent Motion to Reset Hearing*, Docket – Vol. I, pp. 173 to 176.
[30] *Notice of Resetting* dated March 18, 2019, Docket – Vol. I, p. 178; Minutes of the hearing held on, and Order dated, May 16, 2019, Docket – Vol. I, pp. 263 to 266, and 270 to 271, respectively.
[31] Docket – Vol. I, pp. 157 to 172.
[32] Docket – Vol. I, pp. 180 to 187.
[33] *Manifestation* dated May 21, 2019, Docket – Vol. I, pp. 278 to 279.
[34] Docket – Vol. I, pp. 620 to 631.
[35] Docket – Vol. I, pp. 634 to 635.
[36] Pre-Trial Order dated July 18, 2019, Docket – Vol. I, pp. 643 to 657.

Trial proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mr. Jomerito S. Soliman,[37] petitioner's President; and (2) Mr. Diosdado Santiago,[38] the Licensed Customs Broker of petitioner.

Petitioner posted its *Formal Offer of Documentary Exhibits* on September 16, 2019.[39] Respondent submitted his *Comment (on Petitioner's Formal Offer of Documentary Exhibits)* on October 3, 2019.[40]

In the Resolution dated November 22, 2019,[41] the Court admitted petitioner's Exhibits, *except* for: (1) Exhibits "P-12" to "P-25", "P-25-A", "P-26" to "P-31", "P-31-a", "P-32" to "P-40", for failure to submit the duly marked exhibits; and (2) Exhibits "P-62" to "P-62-3", for failure to submit the duly marked exhibits and for failure to identify the same.

Consequently, petitioner filed a *Motion for Partial Reconsideration (of the Resolution dated 28 November 2019) with Motion to Admit Marked Exhibits* on December 6, 2019.[42] Respondent submitted his *Manifestation in lieu of Comment.*[43]

In the Resolution dated March 12, 2020,[44] the Court granted petitioner's *Motion for Partial Reconsideration (of the Resolution dated 28 Nov.2019) with Motion to Admit Marked Exhibits*; and admitted in evidence the previously denied Exhibits.

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[37] Exhibit "P-61", Docket – Vol. I, pp. 315 to 339; Minutes of the hearing held on, and Order dated, July 16, 2019, Docket – Vol. I, pp. 636 to 639.
[38] Exhibit "P-63", Docket – Vol. I, pp. 541 to 550; Order dated August 27, 2019, Docket – Vol. I, pp. 664 to 665.
[39] Docket – Vol. I, pp. 725 to 750.
[40] Docket – Vol. I, pp. 752 to 756.
[41] Docket – Vol. I, pp. 763 to 764.
[42] Docket – Vol. II, pp. 765 to 776.
[43] Docket – Vol. II, pp. 1103 to 1104.
[44] Docket – Vol. II, pp. 1111 to 1114. *am*

Considering the manifestation of respondent's counsel that he shall not present any witness, given that the case involves merely questions of law,[45] the Court ordered the parties to file their respective memoranda, in the Resolution dated November 22, 2019.[46]

Thus, on December 20, 2019, respondent posted his *Memorandum*;[47] and on December 27, 2019, petitioner filed its *Memorandum*.[48]

The instant case was deemed submitted for decision on March 12, 2020.[49]

## THE ISSUES

The parties stipulated the following issues for the Court's resolution, to wit:[50]

(i) Whether the subject rice importations complied with the prevailing laws, regulations and policies at the time of importation, particularly on the need to secure an Import Permit; and,

(ii) Whether the forfeiture of the subject rice importations and the subsequent sale at public auction are valid and legal.

***Petitioner's arguments:***

Petitioner argues that the subject rice importations complied with the prevailing laws, regulations and policies at the time of importation, particularly on the need to secure an Import Permit; and that the forfeiture of the subject rice

[45] Refer to the Minutes of the hearing held on, and Order dated, May 16, 2019, Docket – Vol. 1, pp. 263 to 266, and 270 to 271.
[46] Docket – Vol. 1, pp. 763 to 764.
[47] Docket – Vol. II, pp. 1067 to 1100.
[48] Docket – Vol. II, pp. 1021 to 1058.
[49] Resolution dated March 12, 2020, Docket – Vol. II, pp. 1111 to 1114.
[50] Par. 2, Stipulated Issues, JSFI, Docket – Vol. I, p. 624.

importations and the subsequent sale at public auction are invalid and illegal.

In addition, petitioner opines that it is just and right that the costs of importations together with certain margins, if any, consisting of opportunity costs and small profits be refunded to petitioner.

***Respondent's counter-arguments:***

Respondent counter-argues that the President's alleged pronouncements on the lifting of the quota on rice importation neither repealed nor altered the then applicable laws and regulations that require a duly issued import permit from the NFA; that the subject importations were made in violation of the law and are, therefore, subject to seizure and forfeiture in favor of the government; that the alleged expiration of the waiver relating to the Special Treatment of Rice does not automatically vest petitioner with unbridled authority to import rice; that petitioner should have still secured the necessary Import Permits from the NFA; that the subject importations do not meet the requirements of Section 1124 of the CMTA for settlement; and, that the proceedings before the BOC are presumed to be regular.

**RULING OF THE COURT**

The instant *Petition for Review* has partial merit.

***A brief background relative to the importation of rice in the Philippines***

To place matters in the proper perspective, a brief background leading to the instant controversy is in order.

In 1994, the Philippines joined the World Trade Organization (WTO) as a founding member thereof, via the signing of the *Agreement Establishing the World Trade Organization* (which includes certain Multilateral Trade Agreements, such the *General Agreement on Tariffs and Trade*

[GATT] and *Agreement on Agriculture*), through then Secretary of the Department of Trade and Industry, Secretary Rizalino Navarro, and after the adoption by the Philippine Senate of Resolution No. 97.[51]

By virtue of the Philippines' membership in the WTO, certain restrictions on the entry of agricultural and food products into the country were either reduced, removed, or made subject to tariff instead. Specifically, Article XI of the 1994 GATT requires the general elimination of Quantity Restrictions (QRs); while Article XIII of the 1994 GATT entails non-discriminatory application of such restrictions. Thus, as a rule, no QRs are allowed to be imposed by any WTO member in its country.

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

With reference to, and consistent with, the WTO *Agreement*, Republic Act (RA) No. 8178, otherwise known as the *"Agricultural Tariffication Act"*, was enacted on March 28, 1996, amending Presidential Decree No. 4 under Section 5 thereof, giving power to the National Grains Authority, now the NFA, *"to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices"* and to *"undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the*

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[51] Refer to *Tañada, et al. vs. Angara, et al.*, G.R. No. 118295, May 2, 1997.

*Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government."*

In 2006, pursuant to Article 4.2 and Section B of Annex 5 of the Agreement, the Special Treatment of the Philippines for rice was extended from July 1, 2005 to June 30, 2012. Thereafter, on July 14, 2014, the General Council of the WTO issued the *Decision on Waiver Relating to Special Treatment for Rice of the Philippines*, wherein the above-stated Special Treatment was extended until June 30, 2017.

On April 27, 2017, President Rodrigo Roa Duterte issued Executive Order (EO) No. 23 entitled "EXTENDING THE EFFECTIVITY OF THE MOST-FAVOURED-NATION RATES OF DUTY ON CERTAIN AGRICULTURAL PRODUCTS UNDER REPUBLIC ACT NO. 10863, OTHERWISE KNOWN AS THE CUSTOMS MODERNIZATION AND TARIFF ACT, AND THE OTHER PHILIPPINE COMMITMENTS UNDER THE WORLD TRADE ORGANIZATION DECISION ON WAIVER RELATING TO SPECIAL TREATMENT FOR RICE OF THE PHILIPPINES". One of the whereas clauses of the said EO states that "on 1 July 2017, the Waiver Relating to Special Treatment for Rice shall cease to exist".[52] Thus, EO No. 23 was issued in anticipation of the expiration of the extension of the above-stated Special Treatment on June 30, 2017. In any event, Sections 3 and 6 of EO No. 23 provide:

> **SECTION 3. Minimum Access Volume (MAV)[53] commitments on rice.** The MAV commitments of 805,200 MT on rice made in exchange for the waiver[54] shall likewise remain in force and in effect.
>
> xxx xxx xxx
>
> **SECTION 6. Effectivity.** This Order shall take effect immediately following its complete publication in the Official Gazette or in a newspaper of general circulation in the

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[52] Par. 7, *Petition for Review*, vis-à-vis Par. 4, *Answer*, Docket – Vol. I, pp. 12 and 80, respectively; Par. 1.12, Stipulated Facts, JSFI, Docket – Vol. I, p. 624.

[53] *"Minimum Access Volume"* refers to the volume of a specific agricultural product that is allowed to be imported with a lower tariff as committed by the Philippines to the World Trade Organization (WTO) under the Uruguay Round Final Act [Section 3(e), RA No. 8178].

[54] Refer to Annex A To The Waiver Decision of 24 July 2014 Relating to Special Treatment for Rice of the Philippines.

> Philippines, and shall be applicable until 30 June 2020 or until such time that a law amending certain provisions relating to rice tariffication in RA No. 8178 is enacted, whichever comes first, after which the MFN rates of duty as provided for in Column 8 of Annexes A and B shall then apply.

Relative thereto, the NFA then issued its Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 entitled "GENERAL GUIDELINES IN THE IMPORTATION OF 805,200 METRIC TONS, WHITE RICE UNDER THE MINIMUM ACCESS VOLUME COUNTRY SPECIFIC QUOTA (MAV-CSQ) AND THE MINIMUM ACCESS VOLUME OMNIBUS ORIGINS (MAV-OMB) FOR THE YEAR 2017 BY THE PRIVATE SECTOR". The said Memorandum Circular governs, *inter alia*, the issuance and use of Import Permits (with a prescribed format in Annex 9 thereof) in the importation of rice by the private sector; and explicitly provides, under Part XI(3) thereof, that *"the shipment shall be considered illegal in the event the shipment has no valid import permit."*

Having the foregoing backdrop, this Court shall resolve the present controversy.

***There is no need for petitioner to secure Import Permits from the NFA for the subject shipments***

In *Pharmaceutical and Health Care Association of the Philippines vs. Health Secretary Francisco T. Duque III, et al.*,[55] the Supreme Court said:

> Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation**. The *transformation method* requires that an international law be transformed into a domestic law through constitutional mechanism such as local legislation. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

[55] G.R. No. 173034, October 9, 2007.

> Treaties become part of the law of the land through *transformation* pursuant to Article VII, Section 21 of the Constitution which provides that '[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate.' Thus, treaties and conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts. *(Underscoring and italics added)*

Based on the foregoing, treaties are transformed into municipal or domestic laws after undergoing the constitutional process of having the same concurred in by at least two-thirds of the members of the Senate.

In this case, the WTO Agreement, including the Multilateral Trade Agreements attached thereto, was concurred in by the Senate through Resolution No. 97.[56] Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws.[57] Such being the case, WTO Agreement, with the said Multilateral Trade Agreements, attained the same force and effect as that as any other statute.

To reiterate, pursuant to the WTO Agreement, WTO member countries like the Philippines are **prohibited from imposing QRs on imported products**. However, a Special Treatment was accorded to certain countries, allowing them to impose discretionary import licensing as a matter of exception to the rule. The Philippines applied for and was allowed to enjoy Special Treatment from the years 1995 to 2005, or for ten (10) years, and a further extension of seven (7) years until June 30, 2012. In other words, the Philippines was allowed to impose discretionary import licensing until June 30, 2012. Before the expiration of the Special Treatment on June 30, 2012, the Philippines requested for another extension, which was granted on July 24, 2014 through the *Decision on Waiver Relating to Special Treatment for Rice of the Philippines*, wherein the above-stated Special Treatment was extended until June 30, 2017.

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[56] Refer to *Tañada, et al. vs. Angara, et al.*, G.R. No. 118295, May 2, 1997.
[57] *Id.*

Thus, on the basis of the provisions of the WTO Agreement, beginning July 1, 2017, since the Philippines' Special Treatment for rice has already expired, the prohibition from imposing QRs on imported rice has already taken effect. As a consequence, there was no need for petitioner to secure a prior Import Permit from the NFA to import rice, beginning on the said date.

Contrary to the invocation of respondent, this Court cannot readily apply, in this case, the provisions of the Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 of the NFA, specifically as regards the requirement of prior issuance of an import permit for the importation of rice. This must be so because the said NFA issuance is specific, *i.e.*, it refers only to the importation of 805,200 metric tons of white rice **under the MAV country specific quota and the MAV omnibus origins for the year 2017**. Without doubt, the said "MAV" being referred to, was made in compliance with EO No. 23 (series of 2017) issued by the President, wherein the said MAV of 805,200 metric tons of rice are the commitments made by the Philippines "in exchange for the waiver" relating to the Special Treatment of rice.

Relative thereto, pursuant to *Annex A To The Waiver Decision of 24 July 2014 Relating to Special Treatment for Rice of the Philippines*, the said commitments would refer only to "in-quota" importation of rice, to which a tariff is imposed by the Philippines. Parenthetically, an "In-Quota Tariff Rate" refers to the tariff rates for the MAVs committed by the Philippines to the WTO under the Uruguay Round Final Act.[58]

Moreover, in its Letter dated July 17, 2018 to Mr. Soliman,[59] the NFA, through its NFA Administrator, Lt. Col. Jason L.Y. Aquino (Ret) PA, stated:

> In line with the President's policy/pronouncements/ directives at Malacañang on April 5 & 16, 2018 to lower the price of rice, we admire your good and noble intentions of supporting the government in its efforts to eliminate rice shortage. However, **we would like to inform you that <u>the NFA has no existing guidelines/policy on the</u>**

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[58] Section 3(d), RA No. 8178.

[59] Exhibit "P-27", Docket – Vol. II, p. 895.

> **importation of rice outside of the Minimum Access Volume or out-quota as of the present time.** *(Emphasis and underscoring added)*

Consequently, the NFA's Memorandum Circular No. AO-2017-08-002 dated August 4, 2017 governs only the "in-quota" importations of rice, and does not cover "out-quota" importations thereof or importations of rice outside the MAV prescribed/extended under the above-stated EO No. 23 (series of 2017).

In this connection, Section 116 of RA 10863[60] reads:

> SEC. 116. *Free Importation and Exportation.* – **Unless otherwise provided by law or regulation, all goods**[61] **may be freely imported into** and exported from **the Philippines without need for import** and export **permits**, clearances or licenses. *(Emphases added)*

Consistent with the foregoing provision, there being no law or regulation pertaining to the "out-quota" importation of rice, the latter may be freely imported into the Philippines without need for, *inter alia*, import permits.

In this case, the subject importations of petitioner have been identified by the NFA as "out-quota", in its letter dated July 27, 2018,[62] which states, in part, as follows:

> ...**the out-quota importation of Sta. Rosa Farm Products** may be well within the aforementioned Presidential Directive, provided that the importer will pay the tariff rate of 50% as imposed by the BOC. *(Emphases and underscoring added)*

Verily, since the subject importations of rice were identified as "out-quota" by the NFA, there is no need for the latter to issue import permits therefor under Memorandum Circular No. AO-2017-08-002 dated August 4, 2017.

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[60] AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION.

[61] *Goods* refer to articles, wares, merchandise and any other items which are subject of importation or exportation [Section 102(x), RA No. 10863]. Thus, the said term necessarily includes rice.

[62] Exhibit "P-27", Docket – Vol. II, p. 895.

Neither can this Court apply the Memorandum of Agreement dated December 3, 2010 between NFA and the BOC, wherein it was required that Import Authority must be obtained for every imported shipment of rice. Suffice it to state that the said requirement was made during the period wherein the Special Treatment for Rice was still effective; and thus, the same requirement should only apply for the extended period, *i.e.*, until June 30, 2017. A contrary interpretation would be violative of the pertinent provisions of the WTO Agreement.

Correspondingly, since at the time of the subject importation of rice in May 2018, it was legal for petitioner to import rice without need of Import Permits from the NFA, there is no valid basis to support the seizure and forfeiture proceedings, as well as the public auction, which were conducted by the BOC. Simply put, the said proceedings were done illegally, in view of the fact that there was no need for petitioner to secure NFA Import Permits for the said importation of rice.

***Determination of the refundable amount***

This Court does not agree with petitioner that it is entitled to the amount of ₱112,874,700.00, as alleged in the instant *Petition for Review*, for failure to prove the same with sufficient evidence vis-à-vis clear legal basis.

*Apropos*, Section 1143 of the CMTA or RA No. 10863, states the items to be paid from the proceeds of an auction sale, to wit:

> SEC. 1143. *Disposition of Proceeds*. – The following expenses and obligations shall be paid from the proceeds of the sale in the order provided:
>
> (a) Customs duties, except in the case of forfeited goods;
>
> (b) Taxes and other charges due the government;
>
> (c) Government storage charges;

> (d) Expenses for the appraisal, advertisement, and sale of auctioned goods;
>
> (e) Arrastre and private storage charges and demurrage charges; and
>
> (f) Freight, lighterage or general average, on the voyage of importation, of which due notice shall have been given to the District Collector.
>
> The Commissioner is authorized to determine the maximum charges to be recovered by private entities concerned under subsections (e) and (f) of this section.

To be clear, the subject out-quota importations of rice are already subject to the ordinary customs duties, in accordance with paragraph 6 of the *Decision on Waiver Relating to Special Treatment for Rice of the Philippines* dated July 24, 2014, to wit:

> 6. **At the expiration of this waiver, and no later than 30 June 2017, <u>the importation of rice shall be subject to ordinary customs duties</u>** in accordance with paragraph 10 of Annex 5, Section B, of the Agreement of Agriculture. *(Emphasis and underscoring added)*

And while the above-quoted Section 1143 of the CMTA is to the effect that customs duties will not be paid from the proceeds of the sale *"in the case of forfeited goods"*, the same is of no moment in the instant case. This is simply because, as this Court has ruled herein, the forfeiture of the subject rice importations was illegally conducted, and thus, such proceeding is legally non-existent. It is as if no forfeiture has been made in this case. Thus, in addition to the other expenses and obligations enumerated under Section 1143 of the CMTA, the corresponding customs duties shall be deducted from proceeds of the auction sale, to arrive at the refundable amount to which petitioner is entitled.

Moreover, this Court cannot rely on the supposed copy of Customs Administrative Order No. 5-90 dated July 17, 1990,[63] which reflects the limitation of incidental expenses, *i.e.*, not exceeding 10% thereof, to be set aside for the payment thereof

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[63] Docket – Vol. II, pp. 1059 to 1063. *[initials]*

from the proceeds of an auction sale. This is so because the said limitation of 10% is not indicated under Section 12 of the said issuance, but is merely added or inserted as a footnote without any validating marks that it was indeed part of what has been promulgated by the Secretary of Finance. In any event, as stated in the last paragraph of Section 1143 of the CMTA, respondent is authorized to determine the maximum charges to be recovered by concerned private entities relative to: (1) arrastre and private storage charges and demurrage charges; and (2) freight, lighterage or general average, on the voyage of importation, of which due notice shall have been given to the concerned District Collector.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent's Decision dated August 16, 2018, affirming the *Consolidated Order* dated July 13, 2018 of the District Collector, MICP, is hereby **REVERSED** and **SET ASIDE**.

Respondent is **ORDERED TO REFUND** petitioner with the proceeds of the sale in the amount of Php133,102,000.00, less the corresponding customs duties imposable on the subject shipments of rice, and other applicable expenses and obligations, in accordance with Section 1143 of the CMTA or RA No. 10863.

**SO ORDERED**.

**CATHERINE T. MANAHAN**
Associate Justice

**I CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**CERTIFICATION**

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

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