REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PROGRESSIVE GRAINS MILLING CORP.,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 9847

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
MAY 24 2021 4:10 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is the "Motion for Reconsideration [Of the *Decision* dated 18 November 2020]"[1] (**MR**) filed by respondent Commissioner of Customs (**respondent/COC**) *via* registered mail on 04 December 2020[2]. It seeks the reversal of the Court's Decision[3] dated 18 November 2020 (**assailed Decision**) in the above-captioned case. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE,** the foregoing considered, petitioner Progressive Grains Milling Corp.'s Petition for Review filed on 04 June 2018 is **GRANTED**. Instead of forfeiture by respondent Commissioner of Customs, petitioner is **ORDERED TO PAY** the assessed customs duties covering the 603.15 M.T. of white rice in the amount [of] **₱4,011,183.00**, with a fine equivalent to 30% of the

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[1] Division Docket, pp. 358-369.
[2] Received by the Court on 16 December 2020.
[3] Decision Docket, pp. 344-357.

> deteriorated value, plus storage fees computed up to 30 June 2017 only. Upon payment, respondent is **ORDRED** to **RELEASE** the subject 603.15 MT of white rice to petitioner.
>
> **SO ORDERED.**
>
> ...

A perusal of the MR shows that respondent does not pose new arguments. The issues raised in the instant motion are a mere rehash of those already considered and discussed exhaustively by the Court in the assailed decision.

Respondent contends that the Court erred in ordering the release of the 603.15 MT of white rice (the subject shipment / excess shipment) imported by petitioner Progressive Grains Milling Corp. (**petitioner/PGMC**). The COC maintains that the same is a prohibited article under the Customs Modernization and Tariff Act (**CMTA**)[4], the release of which is contrary to law.

In support of his contention, respondent particularly relies on Section 118 of the CMTA which reads:

> ...
> **Sec. 118**. *Prohibited Importation and Exportation.* – The importation and exportation of the following goods are prohibited:
>
> (a) Written or printed goods in any form containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government of the Philippines, or forcible resistance to any law of the Philippines, or written or printed goods containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;
>
> (b) Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises, describes or gives direct or indirect information where, how or by whom unlawful abortion is committed;
>
> (c) Written or printed goods, negatives or cinematographic films, photographs, engravings, lithographs, objects, paintings, drawings or other representation of an obscene or immoral character;

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4 AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION.

> (d) Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys;
>
> (e) Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug in violation of relevant laws and regulations;
>
> (f) Infringing goods as defined under the Intellectual Property Code and related laws; and
>
> (g) All other goods or parts thereof, which importation and exportation are explicitly prohibited by law or rules and regulations issued by the competent authority.
>
> ...

From the foregoing, however, it is clear that rice is not included as one of the articles prohibited for importation under the CMTA. Neither is the importation of rice patently proscribed by any other law. As previously explained in the assailed Decision, Republic Act (**RA**) 8178[5], only maintained the quantitative restrictions on rice importation but did not outlaw the entry of the same.

Furthermore, respondent's and his agents' actions betray their claim of the outright illegality of petitioner's importation.

As will be recalled the District Collector (**DC**) of San Fernando La Union (**SFLU**) initially decided to release the subject shipment and settle the case upon petitioner's procurement of an Import Permit (**IP**) covering the shipment from the National Food Authority[6] (**NFA**) for which petitioner applied.[7] The Legal Service of the Bureau of Customs (**BOC**) even followed-up with the status of petitioner's application with the NFA. In its vague response, the NFA merely expressed that it could take respondent's decision on the matter as a basis for the IP's issuance.[8] Conversely, respondent was relying on the NFA's action on the application to decide whether to allow case's settlement and release the shipment or forfeit the same in favor of the government.

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[5] AN ACT REPLACING QUANTITATIVE IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS, EXCEPT RICE, WITH TARIFFS, CREATING THE AGRICULTURAL COMPETITIVENESS ENHANCEMENT FUND, AND FOR OTHER PURPOSES.

[6] Annex "N" of the Petition for Review, Division Docket, pp. 54-62.

[7] Annex "M" of the Petition for Review, id., p. 53.

[8] BIR Records, p. 85.

It is also worthy to note that petitioner only gained knowledge of excess delivered quantity of 603.15 MT of white rice upon its attempted exit from customs territory on 23 December 2016.[9] Upon notice thereof, petitioner lost no time in applying for an IP as it wrote a letter to the NFA requesting for the issuance of the same over the subject shipment on the same day.[10]

Unfortunately, the NFA failed to process and decide on petitioner's application until the quantitative import restrictions were lifted on 30 June 2017 with the expiration of the Philippine Government's special treatment on rice.[11] Thus, when respondent issued its decision[12] to forfeit the subject shipment (due to the lack of an IP, the processing of petitioner's IP application was no longer possible.

Respondent also argues that the case of *Auyong Hian (Hong Whua Hang) v. Court of Tax Appeals, et al.*[13] (**Auyong Hian**) wherein the Supreme Court upheld the seizure of imported Virginia leaf tobacco applies to the case at bar.

We do not agree.

In *Auyong Hian*, the Supreme Court (while conceding the possibility of settling seizure cases), held that even if, among other things, that the shipment in question cannot be released legally to the importer therein as it was specifically forbidden by RA 1194, to wit:

> ...
> Petitioner Auyong Hian would, accordingly, not even be entitled to redeem, even if he wanted to, the forfeited tobacco, for the surrender to him of said tobacco would be contrary to law, because petitioner could not really be legally entitled to import it inasmuch as he was not a legitimate manufacturer of Virginia-type cigarettes, among whom alone shall be allocated and distributed by the Monetary Board of the Central Bank the Virginia-type leaf tobacco authorized to be imported.
> ...

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9 Petition for Review, Division Docket, p. 16.
10 Id.
11 DECISION ON WAIVER RELATING TO SPECIAL TREATMENT FOR RICE OF THE PHILIPPINES, WT/L/932, 25 July 2014.
12 Annex A of the Petition for Review, Division Docket, pp. 27-33.
13 G.R. No. L-28782, 12 September 1974.

In the present case, however, it is undisputed that petitioner is a holder of a Certificate of Eligibility[14] (**COE**) that authorized the former to import 9,250 MT of white rice for which it deposited with the Landbank of the Philippines (**LBP**) an advance payment on custom duties amounting ₱64,452,699.00.[15] The excess shipment of 603.15 MT was likewise within its import limit as it had only used up 7,200 MT thereof.[16] Petitioner likewise applied for an IP to cover the excess shipment upon knowledge thereof. The DC of the SFLU further allowed petitioner to settle the case upon the IP's issuance. Nothing in the case even suggests that there was a problem with petitioner's application, only that the same was not timely acted upon by the NFA. It is under the abovementioned peculiar circumstances that this Court decided to exercise its equity jurisdiction to arrive at a just disposition of the foregoing controversy.

To reiterate, the Court does not fault respondent for merely carrying out its mandate in seizing the subject shipment as it was not covered by an IP. However, the Court could not also fault petitioner for the excess shipment loaded by its supplier (of which it was clearly unaware). Petitioner's swift action in applying for the IP and willingness to settle any duties upon knowledge of the excess shipment further belies any notion of fraud on its part more so, that any custom duties due thereon would have been covered by its advance payment with the LBP. The inaction of the NFA and the subsequent expiration of the special treatment on rice were also not within the control of either party.

All told, the Court finds no reason to abandon its assailed decision.

WHEREFORE, the foregoing considered, the "Motion for Reconsideration [Of the Decision dated 18 November 2020]" filed by respondent, Commissioner of Customs on 04 December 2020 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of this Court dated 18 November 2020 is hereby **AFFIRMED.**

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14 Annex "E" of the Petition for Review, Division Docket, p. 42.
15 Id.
16 Annex "F" of the Petition for Review, id., p. 43.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice