REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

CALUMPIT MULTI-PURPOSE COOPERATIVE, Petitioner,	**CTA CASE NO. 10023 (UDK SP 028)**
vs.	*Present:*
	RINGPIS-LIBAN, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
BUREAU OF CUSTOMS, REPRESENTED BY ITS COMMISSIONER, REY LEONARDO B. GUERRERO, Respondent.	Promulgated: MAY 30 2024 9:10 a.m.

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DECISION

FERRER-FLORES, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner **Calumpit Multi-Purpose Cooperative** (CMPC) through registered mail on February 1, 2019 against respondent **Bureau of Customs** (BOC), represented by then Commissioner Rey Leonardo B. Guerrero, praying for the Court to render judgment:

1. reversing and setting aside the Decision dated December 7, 2018 of the Commissioner of Customs (COC) in connection with Seizure Identification Nos. 003-2016, 004-2016, 005-2016 and 006-2016; and,

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1 *2005 Revised Rules of the Court of Tax Appeals, as amended*
Rule 4 – *Jurisdiction of the Court*

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Sec. 3. – *Cases within the jurisdiction of the Court in Division* – The Court in division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

(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[.] xxx

2. ordering the release of the proceeds of the auction sale in the amount of ₱68,422,000.00 to petitioner.[2]

THE PARTIES

Petitioner CMPC is a cooperative duly registered and existing under the laws of the Republic of the Philippines, with principal place of business at Room 210D, Sitio Grande Building, A. Soriano Avenue, Intramuros, Manila.[3]

Respondent BOC, as represented by the COC, is an unincorporated government agency attached to the Department of Finance with office address at the Bureau of Customs, Port Area, Manila.[4]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

The National Food Authority (NFA) is the government agency authorized to issue guidelines for the issuance of import permit for importation of rice under Presidential Decree (PD) No. 4,[5] as amended by PD No. 1770.[6] Pursuant to the said laws, NFA Memorandum Circular (MC) Nos. AO-2015-06-012[7] and AO-2016-09-005[8] were issued to provide guidelines governing rice importation for crop years 2014 to 2015 and 2015 to 2016, respectively.[9]

On September 9, 2015, petitioner was granted a *Certificate of Eligibility* (COE) No. MAV-2015-COE-23 to import 7,450 metric tons (MTs) of Thai white rice for the year 2015.[10] To comply with the condition

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2 Statement of the Case, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 852.

3 Par. 1, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.

4 Par. 2, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.

5 PD No. 4 *Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority*

6 PD No. 1770 *Reconstituting the national Grains Authority to the National Food Authority, Broadenings its Functions and Powers and for other purposes*; Par. 3, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.

7 SUBJECT: *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-OO) for the Year 2015 By the Private Sector*; Exhibit "R-2", BOC Records (Folder 3), pp. 589 to 600.

8 SUBJECT: *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 2016 By the Private Sector*

9 Par. 4, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.

10 Par. 5, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853; Exhibit "P-1", BOC Records (Folder 2), p. 317.

set forth in the said COE, petitioner issued *Debit Advice* to cover the advance payment for the tentative assessment of customs duties and taxes in the amount of ₱47,442,712.00.[11]

Pursuant to its 7,450 MT allocation under the Minimum Access Volume (MAV) Rice Importation Program of the NFA, petitioner commenced importation of Thai white rice in November 2015. On different dates, the following shipments arrived at the Manila International Container Port (MICP) under various *Bills of Lading*, to wit:

Shipment	Volume (Net Weight in MTs)	Number of Bags	Bill of Lading Number	Date of Arrival
1	1,125	22,500 (45x20'UP)	AISCMNL1511005[12]	November 11, 2015
2	1,125	22,500 (45x20'UP)	AISCMNL1511009[13]	November 19, 2015
3*	1,100	22,000 (44x20'UP)	AISCMNL1511011[14]	November 23, 2015
4*	1,100	22,000 (44x20'UP)	AISCMNL1511014[15]	November 29 ,2015
5*	450	9,000 (18x20'UP)	AISCMNL1511010[16]	November 29, 2015
6*	300	6,000 (12x20'UP)	AISCMNL1512002[17]	December 10, 2015
7	625	12,500 (25x20'UP)	AISCMNL1601006[18]	January 24, 2016
8	1,275	*(no information)*	AISCMNL1601010[19]	January 31, 2016

**subject shipments*

At the time of arrival of the imported rice, petitioner had no Import Permits for Shipments 3, 4, 5 and 6 (subject shipments).[20] The NFA only issued Import Permits for Shipments 1, 2, 7, and 8, with Import Permit Nos. MAV-CSQ-2015-0316,[21] MAV-CSQ-2015-0433,[22] MAV-CSQ-2015-0526,[23] and MAV-CSQ-2015-0527,[24] respectively.

On January 22, 2016, authorities from the MICP issued *Warrants of Seizure and Detention* (WSDs) against the four (4) subject shipments

[11] Par. 3.04, Statement of Facts and Antecedent Proceedings, *Petition for* Review, Docket – Vol. 1, p. 18; Exhibit "P-2", Docket – Vol. 3, p. 1137.
[12] Exhibit "P-34", BOC Records (Folder 1), p. 17.
[13] Exhibit "P-35", BOC Records (Folder 1), p. 47.
[14] Exhibit "R-9", BOC Records (Folder 1), p. 77.
[15] Exhibit "R-10", BOC Records (Folder 1), p. 101.
[16] Exhibit "R-11", BOC Records (Folder 1), p. 124.
[17] Exhibit "R-12", BOC Records (Folder 1), p. 142.
[18] Exhibit "P-36", BOC Records (Folder 1), p. 157.
[19] Par. 3.05, Statement of Facts and Antecedent Proceedings, *Petition for* Review, Docket – Vol. 1, p. 21.
[20] Par. 6, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.
[21] Exhibit "P-3", BOC Records (Folder 1), p. 42.
[22] Exhibit "P-4", BOC Records (Folder 1), p. 71.
[23] Par. 3.06, Statement of Facts and Antecedent Proceedings, *Petition for* Review, Docket – Vol. 1, p. 22; Annex D-2, Docket – Vol. 1, p. 65.
[24] Petitioner's FOE, Docket – Vol. 3, p. 1133, Exhibit "P-6", BOC Records (Folder 1), p. 206.

consigned to petitioner,[25] for violation of Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP),[26] as amended, *viz.*:

Shipment	**Bill of Lading Number**	**Seizure Identification Case Number**
3	AISCMNL1511011	004-2016[27]
4	AISCMNL1511014	003-2016[28]
5	AISCMNL1511010	005-2016[29]
6	AISCMNL1512002	006-2016[30]

Respondent then proceeded with the sale of the subject shipments by public auction on March 1, 2016 to the winning bidder, Faerdig General Merchandise, for a total amount of ₱68,422,000.00.[31]

Thereafter, the MICP District Collector ordered the forfeiture of the subject shipments in the Decision dated September 27, 2018,[32] the pertinent portions of which read:

> The failure of the claimant to secure from the NFA the required Import Permits for the subject shipments has made its importation as well as its release from customs as '**contrary to law**'. Hence, as mandated by Section 2530 of the TCCP, as amended, the subject shipment must be forfeited in favor of the government.
>
> **WHEREFORE**, above premises considered, the herein subject shipments (Shipment of 44x20' Containers xxx STC: Thai White Rice, which arrived at this Port on December 1, 2015, covered by BL No. AISCMNL1511014; Shipment of 44x20' Containers xxx STC: Thai White Rice, which arrived at this Port on November 24, 2015, covered by BL No. AISCMNL1511011; Shipment of 18x20' Containers xxx STC: Thai White Rice, which arrived at this Port on December 1, 2015, covered by BL No. AISCMNL1511010; and Shipment of 12x20' Containers xxx STC: Thai White Rice, which arrived at this Port on December 12, 2015, covered by BL No. AISCMNL1512002 consigned to **CALUMPIT-MULTI PURPOSE COOPERATIVE** are hereby **FORFEITED** in favor of the government subject for disposal in accordance with customs laws, rules and regulations.
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> **SO ORDERED.**
> MICP Customhouse, Philippines, September 27, 2018.

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25 Par. 7, Stipulation of Facts, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 853.
26 Republic Act No. 1937 *An Act to Revise and Codify the Tariff and Customs Laws of the Philippines*
27 Exhibits "P-15" and "R-4", BOC Records (Folder 3), pp. 645 to 650.
28 Exhibits "P-14" and "R-3", BOC Records (Folder 3), pp. 655 to 658.
29 Exhibits "P-16" and "R-5", BOC Records (Folder 3), pp. 618 to 622.
30 Exhibits "P-17" and "R-6", BOC Records (Folder 3), pp. 683 to 684.
31 Par. 3.18, *Petition for Review*, vis-à-vis par. 6, Relevant Antecedents, *Comment*, Docket – Vol. 1, pp. 26 and 152, respectively.
32 Par. 3.23, *Petition for Review*, vis-à-vis par. 8, *Comment*, Docket – Vol. 1, pp. 27 and 152, respectively; Exhibit "R-7", BOC Records (Folder 3), pp. 741 to 744.

Undeterred, petitioner appealed the forfeiture order to the COC.[33] However, petitioner's appeal was denied in the Decision dated December 7, 2018,[34] signed by then Commissioner Rey Leonardo B. Guerrero. The dispositive portion thereof reads as follows:

> **WHEREFORE**, finding no reversible error, the *Decision* dated 27 September 2018 of the District Collector, MICP, ordering the forfeiture in favor of the government of the shipments of 44x20', 44x20', 18x20' and 12x20' containers of Thai White Rice imported by CALUMPIT-MULTI PURPOSE COOPERATIVE is hereby **AFFIRMED**.
>
> **SO ORDERED.**

A copy of the assailed *Decision* was received by petitioner on January 3, 2019.[35]

PROCEEDINGS BEFORE THIS COURT

Aggrieved by the Decision, petitioner filed the present *Petition for Review* through registered mail on February 1, 2019.[36]

Upon perusal of the *Petition for Review*, the Court noted that the docket fees paid by petitioner were insufficient,[37] and that the Board Resolution authorizing Magdalena S. Salgado to sign the Verification and Certification of Non-Forum Shopping was not attached therein.[38] The Court gave petitioner ample period from notice to comply.

In the *Compliance* filed on March 29, 2019,[39] petitioner informed the Court of its settlement of the unpaid balance of filing fees and attached therein copies of the payment order form. In another *Compliance* filed on May 6, 2019,[40] petitioner submitted the Board Resolution relevant to the authority given to Ms. Salgado.

The *Summons* dated June 14, 2019 was then issued to respondent.[41] Respondent filed a *Comment* on August 5, 2019,[42] which was noted and

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33 Par. 3.24, *Petition for* Review, vis-à-vis par. 9, *Comment*, Docket – Vol. 1, pp. 27 and 152, respectively.
34 Exhibit "R-8", Docket – Vol. 1, pp. 40 to 48.
35 Par. 1.04, *Petition for* Review, Docket – Vol. 1, p. 15.
36 Docket – Vol. 1, pp. 15 to 38.
37 Letter dated March 6, 2019, Docket – Vol. 1, pp. 118 to 119.
38 Resolution dated April 22, 2019, Docket – Vol. 1, pp. 132 to 133.
39 Docket – Vol. 1, pp. 121 to 122.
40 Docket – Vol. 1, pp. 134 to 135.
41 Docket – Vol. 1, p. 140.
42 Docket – Vol. 1, pp. 150 to 161.

considered by the Court as its *Answer* to the *Petition for Review*, in the Resolution dated August 9, 2019.[43] The *BOC Records*, consisting of four (4) folders, were transmitted by respondent on August 29, 2019.[44]

The Pre-Trial Conference that was initially set on November 5, 2019,[45] was reset to February 5, 2020.[46] Petitioner filed its *Pre-Trial Brief* on October 29, 2019,[47] whereas respondent's *Pre-Trial Brief* was filed on November 4, 2019.[48]

After the Court granted respondent's *Motion for Extension (To File Joint Stipulation of Facts and Issues)* posted December 16, 2019,[49] the parties filed separate *Manifestations* that they failed to arrive at a mutually acceptable *Joint Stipulation of Facts and Issues* (JSFI).[50] Thus, the parties attached therein their respective versions of draft JSFI.[51]

At the Pre-Trial Conference,[52] the parties' counsels eventually agreed to adopt paragraphs 1, 2, 3, 4, 5, 7 and 9 of *Stipulation of Facts* and *Stipulation of Issues* contained in petitioner's draft JSFI. Consequently, the Pre-Trial Order was issued on February 19, 2020,[53] marking the termination of the Pre-Trial.

As trial ensued, petitioner presented the following witnesses: 1) Ms. Salgado,[54] Chairperson of petitioner's Board; and, (2) Ms. Renelyn A. Ocampo,[55] petitioner's liaison personnel.

Subsequently, on July 6, 2021, petitioner filed its *Formal Offer of Exhibits*,[56] with respondent's *Comment on Petitioner's Formal Offer of*

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43 Docket – Vol. 1, pp. 199 to 200.
44 Respondent's letter dated August 22, 2019, Docket – Vol. 1, p. 202.
45 Resolution dated August 9, 2019, Docket – Vol. 1, pp. 199 to 200.
46 Minutes of the hearing held on, and Order dated, November 5, 2019, Docket – Vol. 1, pp. 478, and 482 to 483, respectively.
47 Docket – Vols. 1 and 2, pp. 227 to 235, and 484 to 492, respectively.
48 Docket – Vol. 2, pp. 737 to 742.
49 Respondent's *Motion for Extension (To File Joint Stipulation of Facts and Issues)*, Docket – Vol. 2, pp. 776 to 779; and Resolution dated January 9, 2020, Docket – Vol. 2, pp. 785 to 786.
50 Petitioner's *Manifestation (Re: Joint Stipulation of Facts and Issues)* dated January 8, 2020, and Respondent's *Manifestation (Re: Joint Stipulation of Facts and Issues)* dated January 23, 2020, Docket – Vol. 2, pp. 809 to 810, and 820 to 822, respectively.
51 Docket – Vol. 2, pp. 811 to 815, and 823 to 826, respectively.
52 Minutes of the hearing held on, and Order dated, February 5, 2020, Docket – Vol. 2, pp. 846 to 849.
53 Docket – Vol. 2, pp. 852 to 858.
54 Exhibit "P-32", Docket – Vol. 3, pp. 1103 to 1118; Minutes of the hearing held on, and Order dated, August 25, 2020, Docket – Vol. 2, pp. 881, and 884 to 885, respectively; Minutes of the hearing held on, and Order dated, June 30, 2021, Docket – Vol. 3, pp. 1128 to 1130.
55 Exhibit "P-33", Docket – Vol. 2, pp. 914 to 923; Minutes of the hearing held on, and Order dated, September 22, 2020, Docket – Vol. 2, pp. 926 to 928.
56 Docket – Vol. 3, pp. 1132 to 1136.

Exhibits filed on July 21, 2021.[57] In the Resolution dated March 17, 2022,[58] the Court admitted petitioner's documentary evidence, *except* for the following:

1. Exhibit "P-5", for failure to present the original for comparison;
2. Exhibit "P-6", for failure to submit the duly marked exhibit;
3. Exhibits "P-22", "P-23", "P-24", and "P-25", for not being found in the records; and,
4. Exhibit "P-37", for failure of the document offered and identified to correspond with the document marked.

On May 4, 2022, petitioner filed its *Partial Motion for Reconsideration (of the Resolution dated March 23, 2022)*,[59] praying for the admission of Exhibits "P-5", "P-6", "P-22", "P-23", "P-24", and "P-25; and the issuance of *Subpoena Duces Tecum and Ad Testificandum* for Exhibits "P-22", "P-23", "P-24", and "P-25". Respondent filed his *Comment (On Petitioner's Partial Motion for Reconsideration re: Formal Offer of Exhibits)* on June 13, 2022.[60]

In the Resolution dated July 21, 2022,[61] the Court partially granted petitioner's *Partial Motion for Reconsideration*, and admitted Exhibit "P-6"; but found no merit in petitioner's request for issuance of *Subpoena Duces Tecum and Ad Testificandum* for Exhibits "P-22", "P-23", "P-24", and "P-25".

For its part, respondent presented the following personnel: (1) Mr. Antonio Meliton T. Pascual,[62] former Special Assistant to the District Collector;[63] and, (2) Atty Tomas D. Tagra, Jr.,[64] former Chief of the BOC-MICP Law Division.[65]

The *Formal Offer of Exhibits for Respondent Bureau of Customs* was filed on November 22, 2022;[66] while petitioner filed its *Comment [to the Formal Offer of Exhibits]* on December 9, 2022.[67] In the Resolution dated

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57 Docket – Vol. 3, pp. 1140 to 1145.
58 Docket – Vol. 3, pp. 1179 to 1181.
59 Docket – Vol. 3, pp. 1183 to 1184.
60 Docket – Vol. 3, pp. 1208 to 1211.
61 Docket – Vol. 3, pp. 1218 to 1223.
62 Exhibit "R-14", Docket – Vol. 3, pp. 994 to 1005; Minutes of the hearing held on, and Order dated, July 26, 2022, Docket – Vol. 3, pp. 1224 to 1225.
63 Transcript of Stenographic Notes (TSN) dated July 26, 2022, p. 3.
64 Exhibit "R-13", Docket – Vol. 2, pp. 754 to 763; Minutes of the hearing held on, and Order dated, November 17, 2022, Docket – Vol. 3, pp. 1228, and 1231 to 1232, respectively.
65 TSN dated November 17, 2022, p. 4 of 11.
66 Docket – Vol. 3, pp. 1234 to 1240.
67 Docket – Vol. 3, pp. 1244 to 1246.

March 3, 2023,[68] the Court admitted respondent's offered exhibits, with the exception of Exhibit "R-1", for not being found in the records and for failure to identify.

Thereafter, *Memorandum for Petitioner* was filed on April 3, 2023;[69] while the *Memorandum* for respondent was filed on May 9, 2023.[70]

With the filing of the parties' respective memorandum, the present case was submitted for decision on May 19, 2023.[71]

THE ISSUES

As agreed during the Pre-Trial Conference,[72] the issues for this Court's resolution are the following:

(A) A.1 Whether or not NFA Memorandum Circular No. AO-2015-06-012 has the force and effect of law;

A.2 Whether or not NFA Memorandum Circular No. AO-2015-06-012 was superseded by Memorandum Circular No. AO-2016-09-005 as guidelines for rice importations for the year 2015-2016;

(B) Whether or not petitioner's shipments were illegal in the absence of an Import Permit from the National Food Authority prior to arrival of shipments at the port of entry in the Philippines;

(C) Whether or not petitioner's shipments were legally sold at the auction sale; and

(D) Whether or not petitioner's shipments were legally forfeited pursuant to Section 2530(f) of the Tariff and Customs Code of the Philippines and the absence of import permit as stated in Respondent's Decision.[73]

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68 Docket – Vol. 3, pp. 1259 to 1260.
69 Docket – Vol. 3, pp. 1261 to 1287.
70 Docket – Vol. 3, pp. 1294 to 1309.
71 Minute Resolution dated May 19, 2023, Docket – Vol. 3, p. 1312.
72 Pre-Trial Order, Docket – Vol. 2, p.854
73 B. Stipulation of Issues, Statement of Facts and Issues, Pre-Trial Order dated February 19, 2020, Docket – Vol. 2, p. 854.

Petitioner's arguments:

Petitioner forwards the following arguments – *first,* that NFA MC No. AO-2015-06-012 does not have the force and effect of law within the contemplation of Section 2530(f) of the TCCP; *second,* that NFA MC No. AO-2015-06-012 was superseded by NFA MC No. AO-2016-09-005 as guidelines for rice importations for the years 2015-2016, in an apparent move to clarify the inconsistencies in the previous MC; *third,* that even assuming that NFA MC No. AO-2015-06-012 has the force and effect of law, the absence of an Import Permit from the NFA prior to, or during, arrival of shipments at the port of entry in the Philippines, did not render petitioner's subject shipments "illegal", both under the TCCP and under said NFA MC No. AO-2015-06-012; *fourth,* that petitioner's shipments were illegally sold at the auction sale; and *lastly,* that the forfeiture of petitioner's shipments was not in accordance with Section 2530(f) of the TCCP.

Respondent's counter-arguments:

Contrariwise, respondent posits – *first,* that NFA MC No. AO-2015-06-012 is a valid issuance which the COC merely followed and implemented; *second,* that the said MC has the force and effect of law; *third,* that there is no inconsistency in the said MC; *fourth,* that petitioner's shipments which arrived in Philippine ports without the requisite Import Permit are considered illegal importations; and *lastly,* respondent legally forfeited the rice shipments subject of this case, and the auction is likewise valid.

THE COURT'S RULING

The *Petition for Review* lacks merit.

NFA MC No. AO-2015-06-012 dated June 10, 2015 has the force and effect of law

Petitioner insists that NFA MC No. AO-2015-06-012 does not have the force and effect of law within the contemplation of Section 2530(f) of the TCCP, which provides:

> SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* – Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

xxx xxx xxx

> f. Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted **contrary to law**, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former. *(Emphasis and underscoring added)*

This Court disagrees.

The word "law" includes regulations having the force and effect of law, meaning substantive or legislative type rules as opposed to general statements of policy or rules of agency, organization, procedures or positions. An inherent characteristic of a substantive rule is one affecting individual rights and obligations; the regulation must have been promulgated pursuant to a congressional grant of quasi-legislative authority; the regulation must have been promulgated in conformity to congressionally-imposed procedural requisites.[74]

On March 28, 1996, Republic Act No. 8178,[75] otherwise known as the *Agricultural Tariffication Act,* was enacted amending PD No. 4,[76] giving power to the NFA (formerly National Grains Authority) to wit:

> Sec. 5. Amendment. – Subparagraph (xii), paragraph (1) Section 6 of Presidential Decree No. 4 (National Grains Authority Act), as amended, is hereby further amended to read as follows:
>
> "Sec 6. (a) Powers. –
>
> "(xii) 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.
>
> "In the exercise of this power, the Council, after consultation with the Office of the President shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: *Provided,* That this requirement shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO. The Authority shall 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 Council

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74 *Jardeleza vs. People of the Philippines,* G.R. No. 165265, February 6, 2006.

75 *An Act Replacing Quantitative Import Restrictions on Agricultural Products, Except Rice, with Tariffs, Creating the Agricultural Competitiveness Enhancement Fund, and for other Purposes*

76 *Providing for the Development of the Rice and Corn Industry and Creating for this Purpose the National Grains Authority*

> regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government." (Underscoring supplied)

It is clear from the foregoing that the NFA has the authority to issue rules and regulations governing the importation of rice. The Supreme Court in *Republic vs. Maria Basa Express Jeepney Operators and Drivers Association, Inc. et al.*[77] affirmed that rules and regulations issued by administrative agencies have the force and effect of a law, *viz*:

> As a general rule, legislative power, or the power to make, alter, or repeal laws, is a quintessential and non-delegable power of the legislature.
>
> xxx xxx xxx
>
> This principle of non-delegability is not absolute, as administrative agencies have been endowed with the limited power to issue rules and regulations. Aptly called "quasi-legislative" or "rule-making" power, it is the "power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the non-delegability and separability of powers."
>
> The rationale behind allowing administrative agencies to promulgate rules and regulations was explained in *Philippine International Trading Corporation v. Presiding Judge Angeles*, to wit:
>
>> Similarly, the grant of quasi-legislative powers in administrative bodies is not unconstitutional. Thus, as a result of the growing complexity of the modern society, it has become necessary to create more and more administrative bodies to help in the regulation of its ramified activities. Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice. This is the reason for the increasing vesture of quasi-legislative and quasi-judicial powers in what is now not unreasonably called the fourth department of the government.
>
> This principle stems from the previous ruling in *Antipolo Realty Corporation v. National Housing Authority*, which elucidated that this limited delegation of authority to administrative agencies arises out of the need for special competence and experience which was recognized as essential in order to resolve questions of a "complex or specialized character." The delegation of legislative power also addresses the recognized gap that the legislature cannot adequately promulgate laws that would deal with and respond promptly to the minutiae of everyday life.
>
> The administrative agencies' rule-making power is relatively pervasive, as the rules, regulations, and general orders they enact pursuant to the powers delegated to them, have the force and effect of law and are binding on all persons subject to them.

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[77] G.R. Nos. 206486, 212604, 212682, 212800, August 16, 2022.

Indeed, administrative issuances have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations.[78]

Notably, the opening paragraph of NFA MC No. AO-2015-06-012 reads:

> **Pursuant to <u>the powers granted to the National Food Authority (NFA) under Presidential Decree No. 4, as amended</u>, to establish rules and regulations <u>governing the importation of rice</u>** and by virtue of Council Resolution No. 781-2015 dated 09-06-15, **this Memorandum Circular is hereby issued <u>for the</u> information and <u>compliance of all interested parties</u>.**" *(Emphases and underscoring supplied)*

It can be gleaned from the above provision that it was issued pursuant to the afore-quoted amendment introduced in the *Agricultural Tariffication Act*. Being enacted pursuant to the power delegated to the NFA under the law, the administrative issuance has the force and effect of law. As such, contrary to petitioner's stance, NFA MC No. AO-2015-06-012 is within the contemplation of Section 2530(f) of the TCCP.

NFA MC No. AO-2015-06-012 dated June 10, 2015 was not superseded by NFA MC No. AO-2016-09-005

The Court cannot lend credence to petitioner's position that NFA MC No. AO-2015-06-012 was superseded by NFA MC No. AO-2016-09-005. A cursory reading of the subject heading reveals that NFA MC No. AO-2016-09-005 is for *"THE YEAR 2016"* covering the Crop Year 2015-2016, whereas NFA MC No. AO-2015-06-012 is for *"THE YEAR 2015"* for the Crop Year 2014-2015. Additionally, NFA MC No. AO-2016-09-005 was only issued on September 6, 2016, or approximately nine (9) months ***after*** the subject shipments arrived at the MICP. Evidently, NFA MC No. 2015-06-012 applies to the subject shipments.

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78 *Chevron Phils., Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.

Import Permits are required for the subject shipments

As discussed above, NFA MC No. AO-2015-06-012 has the force and effect of a law. It requires importers to secure an Import Permit per Bill of Lading, quoted as follows:

> **X. ISSUANCE AND USE OF IMPORT PERMIT (IP)**
>
> 1. To obtain an Import Permit (ANNEX 9) the importer shall submit to the GMOD-FOD electronic copies of shipping documents submitted to the LBP **prior arrival of the carrying vessel at designated Port of Discharge**. These documents are as follows:
>
> 1.1 Arrival Information Notice (ANNEX 10)
> 1.2 Bill of Lading
> 1.3 Commercial Invoice
> 1.4 Certificate of Origin
> 1.5 Certificate of Fumigation
> 1.6 Phytosanitary Certificate
> 1.7 Certificate of Weight and Inspection of the quality and weight of rice and the condition of bags
> 1.8 Inspection Certificate as to the Condition of the Vessel (for break bulk shipment)
> 1.9 Packing List
> 1.10 Notice of Arrival issued by the Shipping Lines
> 1.11 Other documents as required by the LBP
>
> 2. The importer shall provide the NFA a copy of the LBP issued proof of payment to suppliers and stamped documents <u>before the arrival of the shipment.</u> LBP shall likewise provide NFA a copy of these documents through e-mail.
>
> 3. The NFA Administrator shall issue the import permit upon recommendation of GMOD-FOD, ODAMO (Office of the Deputy Administrator for Marketing Operations), and OAAMO (Office of the Assistant Administrator for Marketing Operations) that all documents/requirements have been fully complied in accordance to the Guidelines. The import permit shall be signed by the NFA Administrator and shall be in form as embodied in **ANNEX 11** of these guidelines.
>
> 4. <u>The shipment shall be considered illegal in the event the shipment arrives without a valid import permit.</u>
>
> 5. The import permit shall be issued on a per Bill of Lading (B/L) basis upon payment PhP5,000.00 processing fee per B/L. (Underscoring supplied)

Concomitantly, the Bureau of Customs issued Customs Memorandum Circular (CMO) No. 14-2015 dated October 1, 2015 with the subject *NFA's Issuance of Certificate of Eligibility (COE) for the 2015 Minimum Access*

Volume (MAV)-Country Specific Quota (CSQ) and Omnibus Origin Rice Importation Program. Appended to the CMO is NFA MC No. AO-2015-06-12.

Clearly, an import permit is mandatory for every shipment of rice, the absence of which makes the shipment illegal.

Petitioner had no Import Permit for the subject shipments

It is undisputed that petitioner was not able to secure Import Permits for the subject shipments. In the assailed Decision dated December 7, 2018,[79] then Commissioner Guerrero found the following, *viz*:

xxx xxx xxx

- On 22 November 2015, Calumpit applied for the issuance of an Import Permit for its shipment of 1,100 MT of Thai White Rice due to arrive on 23 November 2015. Calumpit submitted documents such as: Arrivals Information Notices, Bills of Lading, Commercial Invoices, Packing Lists, Certificates of Origin, Certificates of Fumigation, SPS Certificates, Certificates of Weight and Inspection, Notices of Arrival, and Omnibus Affidavit executed by Magdalena Salgado.

- On 27 November 2015, Calumpit applied for the issuance of Import Permits for its shipments of 1,100 MT and 450 MT of Thai White Rice due to arrive on 29 November 2015. Documentary requirements were also submitted by Calumpit.

- On 09 December 2015, Calumpit applied for the issuance of Import Permits for its 300 MT rice shipment due to arrive on 10 December 2015.

- However, the NFA pointed out in its *Comment/Opposition* that, despite submitting the above documentary requirements, Calumpit was not able to process the Import Permits because **Calumpit failed to submit the Debit Advice from Land Bank as proof of payment to their supplier for its imported rice, which is required under the MAV 2015 Guidelines**.
- Further, the NFA pointed out that **Calumpit was fully aware that under the MAV Guidelines, application for Import Permits cannot be processed unless there is submission of the complete documentary requirements**.

- Due to the foregoing, the NFA did not issue Import Permits for the following rice shipments, to wit:

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[79] Decision, Exhibit "R-8", Docket – Vol. 1, pp. 40 to 48.

B/L No.	Quantity (MT)	Date of Arrival
AISCMNL1511011	1,100 (44x20')	23 November 2015
AISCMNL1511014	450 (18x20')	29 November 2015
AISCMNL1511010	1,100 (44x20')	29 November 2015
AISCMNL1512002	300 (12x20')	10 December 2015
Total	2,950	

- **On 07 January 2016, Calumpit submitted to the NFA two (2) Debit Advices issued by LBP, dated January 06, 2016, as proof of payment to its supplier of the principal plus negotiation charges for its rice imports which arrived on 23 November 2015 (<u>under B/L No. AISCMNL1511011</u>) and 10 December 2015 (<u>under B/L No. AISCMNL1512002</u>), amounting to ₱4,500,549.47 and ₱17,000,276.50, respectively.**

- On 20 January 2016, Calumpit wrote the NFA narrating the circumstances why it failed to comply with all the required pre-importation documents. Calumpit's Chairman, Ms. Salgado, stated that: *they had no intention to abandon their four (4) shipments;* ***that it took them a very long time to settle the amount with the LBP because they had no funds for the past few months; that they were able to pay their two (2) shipments with Bill Lading nos. <u>AISCMNL1512002</u> and <u>AISCMNL1511011</u> on January 6 and 7, 2016, <u>however, they failed to process the import permit; that they thought they can still process their import permit;</u> that they merely waited for the proceeds of their sales to pay the said shipments; <u>that as of this moment, it is impossible for them to pay the other two (2) shipments and they take responsibility to pay at LBP before January 31, 2016 once the two (2) import permits are available;</u>*** *that with regard to their pending shipment for a total balance of 2,240 MT, the 625MT, the same will depart from Thailand on January 19, 2016 and with a tentative date of arrival on January 23 or 24, 2016; and the balance of 1,275 MT is scheduled for loading and depart from Thailand on January 26, 2016 with tentative date of arrival on January 30 and 31.*

- **On 28 January 2016, Calumpit submitted to the NFA a Debit Advice issued by the LBP, dated January 27, 2016, in the amount of ₱6,976,995.65, as payment for its shipment which arrived on 29 November 2015 (<u>under B/L No. AISCMNL1511010</u>).**

- Meanwhile, on 29 January 2016, BOC issued Warrant of Seizure and Detention on the 2,950 MT rice shipment of Calumpit.

- **On 01 February 2016, Calumpit submitted the Debit Advice issued by LBP, dated January 29, 2016, as proof of payment of its 1,100 MT shipment which arrived on 29 November 2015 (<u>under B/L No.</u>**

> **AISCMNL1511014), in the total amount of ₱17,269,344.06.** *(Emphases and underscoring added)*

Notably, during trial, Justice Maria Rowena Modesto-San Pedro clarified the timing of issuance of the Import Permit. Although such is required for every importation of rice, it was established that Import Permit are usually issued, at least insofar as petitioner's importation, after the arrival of the shipments. For the four shipments that were released (Shipments 1, 2, 7 and 8), Import Permits were issued after the arrival of the shipments.

A distinction, however, must be drawn between the four released shipments and the subject shipments. With respect to the released shipments, complete documents were submitted before the arrival of the shipments, hence NFA was able to process the Import Permits and issued the same shortly after the arrival of the documents. On the other hand, the subject four shipments failed to submit the Debit Advices as proof of payment to its suppliers. This prevented NFA from processing the Import Permits. Petitioner's witness, Ms. Salgado, admitted to the absence to the proof of payment prior to arrival of the shipments, to wit:[80]

> **Justice San Pedro :** Was there anything different in the case of these four shipments seized? Meaning was there any document that you failed to submit that were submitted for the other four which were not seized?
>
> **Witness :** Yung proof of payment lang po and medyo na-delay lang po ng konti pero lahat po yun the same process po na kumbaga nai-submit po lahat.
>
> **Justice San Pedro :** Pero yung proof of payment nitong apat na ito you were able to pay before arrival?
>
> **Witness:** No Your Honor, after arrival po.

Correlatively, the reason for the NFA's denial for the issuance thereof was that petitioner *"failed to submit the Debit Advice from Land Bank as proof of payment to their supplier for its imported rice"*.

Absent the required import permit, the subject shipments are considered illegal.

[80] TSN dated August 25, 2020, p. 22.

Auction sale is justified under Section 2607 of the TCCP

Petitioner further contends that its rice shipments do not fall under any of the enumeration in Section 2601 of the TCCP, and that the auction sale cannot be justified under Section 2607 thereof.

This Court disagrees with petitioner.

Sections 2601 and 2607 of the TCCP, as amended, provide as follows:

> SEC. 2601. *Property Subject to Sale.* – Property in customs custody shall be subject to sale under the conditions hereinafter provided:
>
> a. Abandoned articles;
>
> b. Articles entered under warehousing entry not withdrawn nor the duties and taxes paid thereon within the period described under Section 1908 of this Code;
>
> c. Seized property, other than contraband, after liability to sale shall have been established by proper administrative or judicial proceedings in conformity with the provisions of this code; and
>
> d. Any article subject to a valid lien for customs duties, taxes or other charges collectible by the Bureau of Customs, after the expiration of the period allowed for the satisfaction of the same.
>
> SEC. 2607. *Disposition of Articles Liable to Deterioration.* – Perishable articles shall be deposited in any appropriate bonded warehouse; and, if not immediately entered for export or transportation from the vessel or aircraft in which imported or entered for consumption and the duties and taxes paid thereon, such articles may be sold at auction, after such public notice, not exceeding three days, as the necessities of the case permit.
>
> When seizure shall be made of property which, in the opinion of the Collector, is liable to perish or be wasted or to depreciate greatly in value by keeping or which cannot be kept without great disproportionate expense, whether such property consists of live animals or of any article, the appraiser shall so certify in his appraisal, then the Collector may proceed to advertise and sell the same at auction, upon notice as he shall deem to be reasonable.
>
> The same disposition may be made of any warehoused articles when the opinion of the Collector it is likely that the cost of depreciation, damage, leakage, or other causes, may so reduce its value as to be insufficient to pay the duties, taxes and other charges due thereon, if

> *As to primacy of issues*, the question on the legality of imports is the predominant matter, while **the auction of perishable goods is merely a provisional measure resorted to when the seized property 'is liable to perish or be wasted or to depreciate greatly in value by keeping, or which cannot be kept without great disproportionate expense[.]'**
>
> ***As to manner of conduct*, perishable property is auctioned off <u>without prejudice to further proceedings determining the legality of the importations</u>.** This is evident from Section 5.c of CAO 10-2007 which requires only an examiner's/appraiser's certification that the articles are perishable so that the auction may proceed. After the conduct of which, pursuant to CMO 042-1993, 'the proceeds thereof [are] to be held in escrow to be awarded to the party in whose favor the case will be decided.' In contrast, forfeiture and auction sale may also be employed as a final sanction if done pursuant to Section 2601(d)[86] of the TCCP, after the importation has been adjudged illegal. In which case, Section 5.b of CAO 10-2007 requires a 'Certificate of Finality of Forfeiture' so that the auction may proceed." *(Emphases and underscoring added.)*

From the foregoing, when the seized property is perishable, such as rice, Section 2607 applies. In such case, the Collector may proceed to advertise and sell the said article at auction upon notice as he shall deem to be reasonable, without prejudice to further proceedings to determine the legality of the importation. The auction sale pursuant to Section 2607 of the TCCP, is therefore, justified.

All told, the shipments of 44x20', 44x20', 18x20' and 12x20' containers of Thai white rice were legally seized for lack of Import Permits, as required under NFA MC No. AO-2015-06-012, and the forfeiture of ₱68,422,000.00 in favor of the government corresponding to the proceeds of the auction sale should be affirmed.

WHEREFORE, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, respondent's Decision dated December 7, 2018, affirming the Order dated September 27, 2018 of the MICP District Collector is **AFFIRMED *in toto***.

CORAZON G. FERRER-FLORES
Associate Justice

[86] Now Section 2601(c) of the TCCP, as amended.

WE CONCUR:

With concurring opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CALUMPIT MULTI-PURPOSE COOPERATIVE, *Petitioner,*	**CTA CASE NO. 10023**
	Members:
-versus-	**RINGPIS-LIBAN**, *Chairperson,* **MODESTO-SAN PEDRO**, *and* **FERRER-FLORES**, *JJ.*
BUREAU OF CUSTOMS, represented by its Commissioner, Leonardo B. Guerrero, *Respondent.*	**Promulgated:** MAY 30 2024 9:10 a.m.

x---x

CONCURRING OPINION

RINGPIS-LIBAN, J.:

I concur with the decision of J. Ferrer-Flores.

First, petitioner cannot claim that the NFA the Memorandum Circular No. AO-2015-06-012 dated June 10, 2015 does *not* have the force and effect of law. This circular is an administrative issuance for the purpose of regulating the importation of white rice by the private sector.[1] It was issued by the National Food Authority (NFA) pursuant to its power of rule-making and subordinate legislation and has the force and effect of law.

It is elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the *force of law*, are entitled to great respect, and have in their favor a *presumption of legality*.[2] As such, unless "declared invalid in a case where its validity is directly put in issue, courts must consider their use and application."[3]

[1] Exhibit R-2, Docket, Vol. 3, p. 1015.
[2] *Español v. Chairman, Philippine Veterans Administration*, G.R. No. L-44616, June 29, 1985, Supreme Court *En Banc*.
[3] *Alfonso v. Land Bank of the Philippines*, G.R. Nos. 181912 & 183347, November 29, 2016, Supreme Court *En Banc*.

Second, petitioner already benefited from the implementation of the circular when it was able to secure the NFA Import Permits for the other shipments that were eventually released. It is, therefore, *estopped* from questioning its application to the *other* rice shipments that were seized because of the absence of the NFA Import Permits.

Third, regardless of the alleged inconsistent implementation of the circular with respect to the Import Permit, respondent and *certainly the Court* cannot turn a blind eye to the explicit provision in Section X(4) thereof, which states:

> "X. ISSUANCE AND USE OF IMPORT PERMIT (IP)
>
> 1. To obtain an Import Permit **(ANNEX 9)** the importer shall submit to the GMOD-FOD electronic copies of shipping documents submitted to the LBP **prior arrival of the carrying vessel at designated Port of Discharge**. xxx:
>
> xxx xxx xxx
>
> 2. The importer shall provide the NFA a copy of the LBP issued proof of payment to suppliers and stamped documents before the arrival of the shipment. LBP shall likewise provide NFA a copy of these documents through e-mail.
>
> xxx xxx xxx
>
> 4. The shipment shall be considered illegal in the event the shipment arrives without a valid import permit."[4] (*underscoring supplied*)

Fourth, when the shipments without Import Permits arrived on November 23, 29 and December 10, 2015, respondent did *not* immediately seize them. It was only on January 22, 2016 when the *Warrants of Seizure and Detention* were issued, *after* respondent examined the documentation and found that no permits were attached to the Single Administrative Document (SAD).[5]

Finally, the contention of respondent's counsel is well-taken.[6] If an Import Permit was *timely* applied for by petitioner but was *not* issued upon the arrival of shipment, it could have informed the respondent and showed proof of submission of the NFA application together with the supporting documents. At the very least, there is reasonable presumption that it tried to comply with the circular. Unfortunately, petitioner failed to

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[4] Exhibit R-2, Docket, Vol. 3, p. 1019.
[5] *Judicial Affidavit of Mr. Antonio Meliton Pascual*, Exhibit R-14, 15Q, Docket, Vol. 3, pp. 997-998.
[6] Respondent's *Memorandum*, Docket, Vol. 3, pp. 1304-1305.

offer in evidence the document that proved that it at least exerted efforts to apply for Import Permits beforehand.[7]

All told, I concur with the decision.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[7] See petitioner's *Formal Offer of Evidence*, Docket, Vol. 3, pp. 1132-1136.