REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

UNIVERSAL PACIFIC FOOD CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS,
Respondents.

CTA Case No. 9151

Members:
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 3 1 2018
4:28 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This Petition for Review[1] filed by Universal Pacific Food Corporation (UPFC) against the Commissioner of Customs (COC) and the Bureau of Customs (BOC) seeks to reverse, set aside and nullify the Decision of the COC dated August 12, 2015, as well as the order of the District Collector, Manila International Container Port (MICP) in seizing and forfeiting the subject shipment of white rice. Petitioner also seeks an award in the amount of Two Million Six Hundred Ninety-Three Thousand Pesos (₱2,693,000.00), representing the amount held in escrow after respondent auctioned off the said shipment.

[1] Docket, pp. 12-23.

THE FACTS

Petitioner UPFC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at Lot 9, Block 5, San Miguel Avenue, Ortigas Center, Pasig City.[2]

On the other hand, respondent BOC, is an unincorporated government agency attached agency of the Department of Finance; and respondent COC is its incumbent Commissioner.[3]

On November 6, 2013, a shipment of 28x20' containers said to contain 12,320 bags of White Rice 25% Broken consigned to UPFC arrived from Thailand on board the vessel MAMITSA, under Registry No. RGP-0147.[4]

The shipment was covered by Import Entry No. C223513-13, Bill of Lading Number EGLV050300766382A, Import Permit, Notice of Allocation, Certificate of Eligibility, Packing List and Invoice, Certificate of Origin, Phytosanitary Certificate, Certificate of Analysis, Certificate of Fumigation and Certificate of Weight and Quality.[5]

Petitioner paid the duties and taxes on the shipment based on the In-Quota rate of 40%, under Tariff Heading No. 1006.3091A. Upon review of the import documents attached to Import Entry No. C223513-13, and submitted to Section 1, Formal Entry Division (FED), MICP, the quantity of rice petitioner is allowed to import is only 616,000 kgs or 14,500 bags under its Import Permit. Consequently, there was an excess of 104,000 kgs or 2,080 bags of White Rice.[6]

Respondent released the twenty-four (24) containers consigned to petitioner except the containers bearing the numbers BMOU2044057, DFSU2167644, DRYU2674268, and EGSU3115421.[7]

The District Collector of Customs, MICP, issued a Warrant of Seizure and Detention against Container Nos. BMOU2044057, DFSU2167644, DRYU2674268, and EGSU3115421 for violation of Section 2530(F) of the Tariff and Customs Code (TCC), as amended, being in excess of the rice

[2] *Id.*, p. 140, Joint Stipulation of Facts and Issue (JSFI).
[3] *Id.*
[4] *Id.*, p. 141, JFSI.
[5] *Id.*
[6] *Id.*
[7] *Id.*

allocation set forth in petitioner's Import Permit and Certificate of Allocation issued by the National Food Authority (NFA).[8]

On October 15, 2014, the District Collector, MCIP, issued an Order forfeiting the shipment in favor of the government. Consequently, on December 1, 2014, petitioner filed a Notice of Appeal.[9]

On January 21, 2015, the Auction and Cargo Disposal Division (MICP) sold the subject shipment through a public auction and held the proceeds thereof in escrow pending the final determination of the case. The details of the auction are as follows:

Seizure Identification No.	Winning Bid Amount	Official Receipt No.
380-2014	₱1,414,400.00	8242812
	₱1,278,600.00	8242816
TOTAL	**₱2,693,000.00**	

On August 19, 2015, petitioner received a copy of the Decision dated August 12, 2015 in Seizure Identification No. 380-2014 (MICP) from the COC denying its appeal and affirming the Forfeiture Order of the District Collector (MICP).[10]

Thereafter, petitioner filed the instant Petition for Review[11] before this Court on September 24, 2015.

Petitioner argues that with respect to quantitative import restrictions on rice, aside from RA No. 8178 and NFA Memorandum Circular No. AO-2K13-003, the provisions of the WTO Agreement are also relevant. The Philippines, being a signatory to the GATT-WTO is bound to observe and respect its international obligations under the GATT-WTO. Specifically, the Philippines is bound to comply with Part III, Article 4 of the Agreement of Agriculture (GATT) which provides that members shall not maintain, resort to, or revert to any measures of the kind (referring to quantitative import restrictions, discretionary import licensing, etc.) which must be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.

[8] *Id.*
[9] *Id.*, p. 142, JFSI.
[10] *Id.*
[11] *Id.* at Note 1.

Furthermore, while the Philippines was granted the privilege to impose quantitative restrictions on rice from 1995 to 2005, which was thereafter extended until June 30, 2012, after negotiations, the Philippines was bound to convert the quantitative restrictions to ordinary customs duties with respect to rice importations after that date. The Philippines cannot invoke RA No. 8178 to justify its refusal to terrify rice and NFA Circular No. AO-2K13-003 is null and void for being ultra vires since it was issued after June 30, 2012 and before July 24, 2014 when the Philippine government was granted another extension on its special treatment of rice until June 30, 2017.

Petitioner also argues that the subject shipment was covered by an import permit and that, contrary to the assailed Decision of the COC, the excess rice shipment should not be considered "undeclared", but merely a "misdeclaration as to quantity" which merits the imposition of a surcharge but not seizure.

On October 28, 2015, respondent posted a Formal Entry of Appearance (with Motion for Extension of Time) to file Answer[12] which the Court received on November 4, 2015. This was granted by the Court in a Resolution dated November 25, 2015[13], granting respondent thirty (30) days from October 31, 2015, or until November 30, 2015, within which to file his Answer. In that same Resolution, respondent was also ordered to certify and elevate the BOC records of the case within ten (10) days after the filing of his Answer.

On December 7, 2015, the Court received respondent's Motion for Extension of Time to File Answer[14] posted on November 25, 2015. This was likewise granted by the Court in a Resolution dated December 16, 2015[15], giving respondent an extended 30-day period or until December 30, 2015 within which to file his Answer.

On January 4, 2016, respondent timely posted[16] his Motion for Extension of Time to File Answer[17] which the Court received on January 13, 2016. In the interest of justice, the Court granted the motion giving respondent a fresh ten-day period or until January 14, 2016 within which to file his Answer in a Resolution dated January 20, 2016.[18]

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[12] *Id.*, pp. 56-58.
[13] *Id.*, pp. 61-62.
[14] *Id.*, pp. 63-66.
[15] *Id.*, p. 69.
[16] December 30, 2015 to January 2, 2016 were holidays and January 3, 2016 fell on a Sunday.
[17] *Id.* at Note 1, pp. 70-72.
[18] *Id.*, p. 87.

Within the extended period granted by the Court, respondent posted his Answer[19] on January 14, 2016 through registered mail which the Court received on January 20, 2016.

Respondent interposed the following special and affirmative defenses, in sum: (1) petitioner has no cause of action against respondent as the the subject containers of rice are in excess of the quantity allowed in its import permit and beyond the rice allocation authorized by the National Food Authority (NFA) thereby making it a prohibited importation; (2) Section 2 of Republic Act (RA) No. 8178, the "Agricultural Tariffication Act" which was passed in recognition of the Philippine commitments with the World Trade Organization (WTO), an import permit is required prior to the importation of rice; (3) Section 4 of Memorandum Circular No. AO-2K13-003 required rice importers to secure import permits from the NFA for all rice importations; (4) as the excess rice importation was without an import permit, it is a prohibited importation liable for forfeiture under Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP); and (5) petitioner's attempt to import the excess bags of rice despite the knowledge of the limitation of the number of bags it is allowed to import under its import permit should be construed as intent to evade payment of duties due and demandable.

The Pre-Trial Conference was scheduled on April 26, 2016.[20]

In a Resolution dated February 4, 2016[21], respondent was directed to certify and elevate the said BOC record within ten (10) days from notice, under pain of contempt.

Owing to respondent's failure to certify and elevate to the Court the BOC record of the case, a Resolution was issued on March 9, 2016[22] directing respondent to show cause why it should not be sanctioned for failing to comply with the Court's directive dated February 4, 2016.

On March 22, 2016, respondent filed his Compliance[23] and elevated the BOC Records consisting of one folder with letter. This was noted by the Court and deemed sufficient compliance in an Order dated March 29, 2016.[24]

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[19] *Id.*, pp. 76-84.
[20] *Id.*, pp. 88-89.
[21] *Id.*, p. 93.
[22] *Id.*, p. 97.
[23] *Id.*, pp. 98-101.
[24] *Id.*, p. 102.

Respondent submitted his Pre-Trial Brief[25] on April 13, 2016, posted through registered mail which the Court received on April 21, 2016; while petitioner filed its Pre-Trial Brief[26] on April 26, 2016.

Within the extended period granted by the Court, the parties submitted their Joint Stipulation of Facts and Issues[27] on August 22, 2016. Subsequently, the Court issued a Pre-Trial Order[28] on September 15, 2016 and terminated the pre-trial.

During the trial, petitioner presented its sole witness, Mr. Ariel T. Hermogenes, the licensed customs broker who prepared, signed and lodged the Import Entry Revenue Declaration Form No. C223513-1 and other documents relevant to the subject shipment.[29] He testified that the Customs Examiner conducted a physical examination of the shipment which revealed that there was an excess in the declared quantity; that after noting down his findings, the shipment continued to be processed and a final assessment was given by way of the E2M Assessment Form; that petitioner paid the government through the bank on November 27, 2013;[30] and that 24 containers were released but the containers subject of the case were left at MCIP and later on, sold through public auction.

Afterwards, petitioner formally offered its testimonial and documentary evidence on March 6, 2017[31]. In a Resolution dated April 19, 2017,[32] the Court admitted petitioner's Exhibits "P-1", "P-2", "P-4" to "P-12", "P-14", "P-15", "P-15-A", "P-16", "P-17" and "P-17-A" and petitioner was deemed to have rested its case. The initial presentation of evidence for respondent was set on May 15, 2017, as previously scheduled.

On May 12, 2017, respondent filed a Manifestation[33] stating that since the issue raised in the subject case is purely a legal one, he would no longer present any evidence to support his defenses.

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[25] *Id.*, pp. 107-115.
[26] *Id.*, pp. 116-122.
[27] *Id.*, pp. 140-145.
[28] *Id.*, pp. 151-156.
[29] *Id.*, p. 175
[30] *Id.*, p. 177.
[31] *Id.*, pp. 189-194.
[32] *Id.*, p. 197.
[33] *Id.*, pp. 198-199.

During the hearing on May 15, 2017, respondent's counsel failed to appear. Consequently, the Court ordered the parties to submit their respective memoranda within thirty (30) days from notice.[34]

On June 23, 2017, the Court received respondent's Motion for Extension of Time to File Memorandum posted on June 14, 2017.[35] This was granted by the Court in a Resolution dated July 5, 2017[36] which gave respondent an additional period of 30 days from June 14 or until July 14, 2017 within which to file his memorandum.

Petitioner filed its Memorandum[37] on July 10, 2017; while respondent filed a Motion for Extension of Time to File Memorandum[38] posted on July 14, 2017 which the Court received on July 21, 2017. This was granted by the Court in a Resolution dated August 3, 2017[39], giving respondent an extension until August 13, 2017 within which to file his memorandum.

Likewise, on August 3, 2017, another Resolution[40] was issued by the Court directing petitioner to comply with the letter dated May 22, 2017[41] within 10 days from notice, with warning of appropriate sanction for non-compliance.

On August 14, 2017[42], respondent filed his Memorandum[43] via registered mail which the Court received on August 23, 2017. On even date, the Court also received respondent's Compliance.[44] Hence, the Court declared the case submitted for decision on September 4, 2017.[45]

THE ISSUES

The parties stipulated that the issue to be resolved in this case is whether or not respondent erred in declaring the excess rice importation as prohibited importation subject of forfeiture under the TCCP.

[34] *Id.*, p. 202.
[35] *Id.*, pp. 204-206.
[36] *Id.*, p. 209.
[37] *Id.*, pp. 210-221.
[38] *Id.*, pp. 223-227.
[39] *Id.*, p. 231.
[40] *Id.*, p. 229.
[41] *Id.*, p. 203, Notice requiring petitioner to deposit an additional 1,000.00, and every year thereafter, to defray the actual travel expenses of the sheriff, process server or other court-authorized persons since the case has been pending for more than one (1) year.
[42] August 13, 2017 fell on a Sunday.
[43] *Id.*, pp. 233-243.
[44] *Id.*, pp. 241-246.
[45] *Id.*, p. 248.

THE RULING OF THE COURT

After a thorough review of the pleadings on record, it is imperative to first address the issue concerning the period within which to file a Petition for Review with the CTA from an adverse decision or ruling of the Commissioner of Customs.

The period to appeal the decision or ruling of the COC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282,[46] and Section 3(a), Rule 8 of the Revised Rules of the CTA (RRCTA).

Section 11 of Republic Act No. 9282 provides:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* **Any party adversely affected by a decision, ruling or inaction of** the Commissioner of Internal Revenue, **the Commissioner of Customs**, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts **may file an Appeal with the CTA** <u>**within thirty (30) days after the receipt**</u> **of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure** with the CTA within **thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x. *(Emphasis supplied.)*

Section 3(a), Rule 8 of the RRCTA states:

> SEC 3. *Who may appeal; period to file petition.* (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, **or by a decision or ruling of the Commissioner of Customs**, the Secretary of

[46] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes.

> Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by **petition for review** filed **within thirty days after receipt** of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x. *(Emphasis supplied.)*

It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the COC to the CTA, the taxpayer must file a **Petition for Review within 30 days** from receipt of said adverse decision or ruling of the COC.

The question is when did petitioner receive the assailed Decision of the COC?

In the "Timeliness of Petition" section in its Petition, petitioner states that it received a copy of the assailed Decision on **August 25, 2015**. Counting thirty (30) days thereafter, petitioner would have had until **September 24, 2015** within which to file the Petition. Since the Petition was indeed filed on that date, it would appear to have been timely filed.

However, in paragraph 11 of its Petition for Review, petitioner makes a contrary claim saying that it received a copy of the Decision of the COC dated August 12, 2015 in Seizure Identification No. 380-2014 (MICP) denying its appeal and affirming the Forfeiture Order of the District Collector (MIC) on **August 19, 2015.**

Counting thirty (30) days from August 19, 2015, the reglementary period for filing an appeal ended on **September 18, 2015**. The Petition for Review, however, was filed on **September 24, 2015**, or six days later.

The same admission of having received the assailed Decision on **August 19, 2015** appears in petitioner's Pre-Trial Brief[47], the parties' Joint Stipulation of Facts[48] and in the Pre-Trial Order.[49] Despite the parties being given the opportunity to file an appropriate motion to correct and/or amend any part of the Pre-Trial Order, no correction or amendment was made by petitioner regarding the matter.

[47] *Id.* at Note 1, p. 118, par. 14.
[48] *Id.*, p. 142, par. 12.
[49] *Id.*, p. 153, Item II (A), par. 12.

On the other hand, there is nothing in the record to support petitioner's bare assertion that it received a copy of the assailed Decision on August 25, 2015.

Sec. 4, Rule 129 of the Revised Rules of Court provides:

> SEC. 4. *Judicial admissions.* - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[50] It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself[51] and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[52]

For petitioner's failure to perfect an appeal within the reglementary period of thirty (30) days from receipt of the adverse decision, it has lost its right to appeal. There is nothing more to appeal as the decision sought to be appealed had already attained finality. Well settled is the rule that judgments or orders become final and executory by operation of law and not by judicial declaration. It is axiomatic, therefore, that the finality of judgment becomes an established fact upon the lapse of the reglementary period of appeal.

Settled is the rule that the right to appeal is not a natural right or a part of due process but is merely a statutory privilege that may be exercised only in the manner prescribed by law.[53] The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed.[54] While the law creating the CTA specifically provides that proceedings before it "shall not be governed strictly by the technical rules of evidence" in order to afford every party-litigant the amplest opportunity for the determination and just determination of his cause free from the constraints of technicalities, the failure to perfect an appeal within the prescribed period, however, is not a mere technicality but

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[50] Regalado, Remedial Law Compendium, Volume Two, Seventh Revised Edition at 650.
[51] *Sps. Jose N. Banarao and Preciosisima Binarao v. Plus Builders, Inc.*, G.R. No. 154430, June 16, 2006 citing *Granada, et al. vs. PNB*, L-20745, September 2, 1966, 18 SCRA 1.
[52] *Id.* citing *Yuliongsiu v. Philippine National Bank*, No. L-19227, February 17, 1968, 22 SCRA 585.
[53] *Boardwalk Business Ventures, Inc. vs Elvira A. Villareal, et al.*, G.R. No. 181182, April 10, 2013.
[54] *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 332.

jurisdictional, and failure to perfect an appeal renders the judgment final and executory.[55]

WHEREFORE, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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[55] *Ruiz v. Delos Santos*, G.R. No. 166386, January 27, 2009, 577 SCRA 29, 43.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice