

**REPUBLIC OF THE PHILIPPINES**  
*Court of Tax Appeals*  
**QUEZON CITY**

*En Banc*

**VICTOR R. DEL ROSARIO RICE**     CTA *EB* NO. 2731  
**MILL CORPORATION,**                     (CTA Case No. 10082)  
*Petitioner,*

*-versus-*

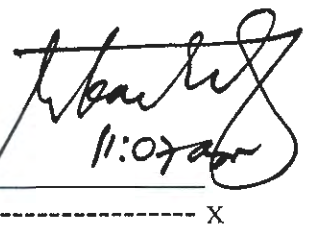
Present:  
**DEL ROSARIO, P.J.,**  
**RINGPIS-LIBAN,**  
**MANAHAN,**  
**BACORRO-VILLENA,**  
**MODESTO-SAN PEDRO,**  
**REYES-FAJARDO,**  
**CUI-DAVID,**  
**FERRER-FLORES, and**  
**ANGELES, JJ.**

**HON. REY LEONARDO B. GUERRERO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF CUSTOMS, ATTY. ERASTUS SANDINO AUSTRIA, IN HIS OFFICIAL CAPACITY AS DISTRICT COLLECTOR MANILA INTERNATIONAL CONTAINER PORT, AND THE BUREAU OF CUSTOMS,**

Promulgated:

**JUL 18 2024**

*Respondents.*



A handwritten signature in black ink is written over a blue date stamp that reads "JUL 18 2024". Below the signature, the time "11:07 am" is handwritten in black ink.

X ----- X

**DECISION**

**MODESTO-SAN PEDRO, J.:**

*The Case*

Before the Court *En Banc* is a Petition for Review,<sup>1</sup> filed under *Section 4(b), Rule 8 of the Revised Rules of Court of Tax Appeals (“RRCTA”),*<sup>2</sup> in relation to *Rule 43 of the Revised Rules of Court (“RROC”)* seeking to annul, reverse and set aside the Decision, dated June 28, 2022 (“Assailed Decision”),<sup>3</sup> and Resolution, dated January 20, 2023 (“Assailed Resolution”),<sup>4</sup> both issued by the Special Second Division of this Court (“Court in Division”).

<sup>1</sup> See Petition for Review, *Rollo*, pp. 1-131 with annexes.

<sup>2</sup> A.M. No. 05-11-07-CTA, 22 November 2005.

<sup>3</sup> See Decision, dated June 28, 2022, *Rollo*, pp. 50-105.

<sup>4</sup> See Resolution dated January 20, 2023, *id.*, pp. 107-120.

### *The Parties*

Petitioner Victor R. Del Rosario Rice Mill Corporation (“petitioner” or “VRDRRMC”) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal place of business at Kilometer 101, National Highway San Leonardo, Nueva Ecija.<sup>5</sup>

Meanwhile, respondent Hon. Rey Leonardo B. Guerrero, in his official capacity as Commissioner of Customs (“COC”), Atty. Erastus Sandino Austria, in his official capacity as the District Collector of Customs (“District Collector”) at the Manila International Container Port (“MICP”) and the Bureau of Customs (“BOC”), are collectively tasked with exercising customs powers, duties and functions, and implementing customs laws, particularly, Sections 201, 202 and 210 of the Customs Modernization and Tariff Act of 2016.<sup>6</sup>

### *The Facts*

The present Petition involves VRDRRMC’s importation of rice, covered by 14 bills of lading (“BL”), pursuant to its allocation under the 2017-2018 Minimum Access Volume (“MAV”) Rice Importation Program of the National Food Authority (“NFA”), from February to September 2018 (“subject shipments”).<sup>7</sup>

Related thereto, petitioner applied for the corresponding import permits with the NFA. Petitioner then narrates that as a pre-requisite to such permits, it advanced the payment of customs duties, thus the presentation of the Land Bank of the Philippines’ (LBP) Debit Advices listed in the table below, with the intention to prove that petitioner’s LBP accounts were debited for the payment of taxes and duties.<sup>8</sup> Further, Import/Export Document Specialist at the International Trade Department of LBP’s Head Office, Hanah Curina R. Rumbaoa testified that part of the amount per Debit Advice has been applied and remitted to the BOC through the Bureau of Treasury (BTr).<sup>9</sup>

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<sup>5</sup> See The Parties, Petition for Review, *Rollo*, p. 3; See also Parties of the Case, Assailed Decision, *Rollo*, p. 52.

<sup>6</sup> *Id.*

<sup>7</sup> Assailed Decision, *Rollo*, p. 52.

<sup>8</sup> *Id.*, pp. 53-54.

<sup>9</sup> *Id.*, p. 54.

Debit Advice Date	Amount Authorized	Particulars	Amount Applied and Remitted
July 27, 2018 <sup>10</sup>	Php350,929,225.00	Advance payment for customs duties under 2018 NFA MAV Rice Importation Program	Php283,386,825.00
January 9, 2018 <sup>11</sup>	Php41,324,794.00	Advance payment for customs duties under 2017 NFA Rice Importation Program	Php27,969,220.00

The NFA, however, belatedly issued the import permits on various dates in February and September 2018.<sup>12</sup> Thereafter, petitioner filed the corresponding goods declaration/import entries for the subject shipments, on different dates from March 20, 2018 to October 17, 2018.<sup>13</sup>

On January 12, 2019, respondent District Collector and the BOC, through its Customs Operations Officer, Ma. Phililia Emilina L. Palaganas sent Notice to Pay<sup>14</sup> to petitioner *via* its official email address, vdrm\_corp@yahoo.com, at 3:34pm, from respondent District Collector's official email address micp@customs.gov.ph.<sup>15</sup> Despite respondent's submission of a print-out of the email with the pertinent date and time of sending the notice, petitioner maintains that it never received the same.

Respondent stated in the Notice to Pay that the subject shipments are listed in the "inventory of assessed but not yet paid shipments for the period of June to December 2018." It was further mentioned that these shipments were recommended for issuance of Order of Abandonment for reason that despite the lapse of 15 days within which to pay the computed duties, taxes and other charges, no such payment has been made. Thus, petitioner was directed to pay the corresponding taxes and duties immediately; otherwise, the same shall be deemed abandoned pursuant to *Section 1129 (c) of the Customs Modernization and Tariff Act ("CMTA")*.<sup>✓</sup>

<sup>10</sup> Exhibit "P-28", Division Docket, Vol. 3 p. 1237.

<sup>11</sup> Exhibit "P-29", *id.*, p. 1238.

<sup>12</sup> Assailed Decision, *Rollo*, p. 54-55.

<sup>13</sup> Assailed Decision, *Rollo*, p. 56-57.

<sup>14</sup> Exhibit "R-17" and "R-18", Division Docket, Vol. IV, pp. 1512-1513.

<sup>15</sup> Assailed Decision, *Rollo*, p. 56.

Petitioner claims to have thereafter learned about respondent's issuance of Decrees of Abandonment,<sup>16</sup> on January 24, 2019, when it followed-up with the BOC for the release of the subject shipments. In the said Decrees of Abandonment, respondent District Collector declared that (1) BOC-MICP-Administrative Division sent Notice to Pay via email to petitioner; and (2) there was implied abandonment due to petitioner's non-payment of customs duties, taxes and other charges.

Pertinent details of the Decrees of Abandonment and the corresponding amount of alleged unpaid taxes per Notice to Pay are summarized below:

	Entry No.	Entry Date	BL No.	Arrival Date	AP No.	Decree Date	Exhibit No.	Assessment Date	Unpaid Taxes
1	C-266313	Sep-30-18	ONEYSGNU83956600	Sep-23-18	090-2019	Jan-14-19	"R-20" <sup>17</sup>	Sep-30-18	4,569,121
2	C-266303	Sep-30-18	ASC0185360	Sep-20-18	092-2019	Jan-14-19	"R-21" <sup>18</sup>	Sep-30-18	5,454,312
3	C-266321	Sep-30-18	HDMUBKML0975915	Sep-17-18	103-2019	Jan-14-19	"R-22" <sup>19</sup>	Sep-30-18	15,988,762
4	C-266308	Sep-30-18	ONEYSGNU77223300	Sep-25-18	087-2019	Jan-14-19	"R-23" <sup>20</sup>	Sep-30-18	4,569,121
5	C-266315	Sep-30-18	EGLV050800801314	Sep-27-18	089-2019	Jan-14-19	"R-24" <sup>21</sup>	Sep-30-18	4,415,742
6	N/A <sup>22</sup>	Sep-30-18	HDMUBKML0975857	Sep-16-18	113-2019	Jan-28-19	"R-33" <sup>23</sup>	N/A	N/A
7	C-266322	Sep-30-18	EGLV050800911462	Sep-26-18	094-2019	Jan-14-19	"R-25" <sup>24</sup>	Sep-30-18	4,399,201
8	C-266339	Sep-30-18	EGLV050800911454	Sep-6-18	091-2019	Jan-14-19	"R-26" <sup>25</sup>	Sep-30-18	4,399,201
9	C-266334	Sep-30-18	COAU7130774950	Sep-13-18	086-2019	Jan-14-19	"R-27" <sup>26</sup>	Sep-30-18	5,721,943
10	C-266328	Sep-30-18	EGLV050800911471	Sep-27-18	088-2019	Jan-14-19	"R-28" <sup>27</sup>	Sep-30-18	4,399,201
11	C-266333	Sep-30-18	ONEYSGNU77907500	Sep-23-18	093-2019	Jan-14-19	"R-29" <sup>28</sup>	Sep-30-18	6,853,049
12	C-251192	Sep-17-18	550810057348	Sep-8-18	255-2018	Oct-12-18	"R-30" <sup>29</sup>	Sep-18-18	4,048,433
13	C-74891	Mar-20-18	COAU7205325320	Mar-17-18	244-2018	Oct-10-18	"R-31" <sup>30</sup>	Aug-10-18	3,239,051
14	C-285652	Oct-17-18	HDMUBKML0979391	Sep-1-18	262-2018	Oct-12-19	"R-19" <sup>31</sup>	Nov-21-18	6,461,403

<sup>16</sup> Exhibits "R-19" to "R-31", "R-33", Division Docket, Vol. 4, pp. 1514-1549, 1557-1558.

<sup>17</sup> *Id.*, pp. 1522-1523.

<sup>18</sup> *Id.*, pp. 1524-1525.

<sup>19</sup> *Id.*, pp. 1526-1527.

<sup>20</sup> *Id.*, pp. 1528-1529.

<sup>21</sup> *Id.*, pp. 1530-1531.

<sup>22</sup> No entry filed, per Decree of Abandonment.

<sup>23</sup> Division Docket, Vol. 4, pp. 1557-1558.

<sup>24</sup> *Id.*, pp. 1532-1533.

<sup>25</sup> *Id.*, pp. 1534-1535.

<sup>26</sup> *Id.*, pp. 1536-1537.

<sup>27</sup> *Id.*, pp. 1538-1539.

<sup>28</sup> *Id.*, pp. 1540-1541.

<sup>29</sup> *Id.*, pp. 1542-1543.

<sup>30</sup> *Id.*, pp. 1548-1549.

<sup>31</sup> *Id.*, pp. 1514-1521.

On January 24, 2019, petitioner allegedly filed Letter-Appeal, dated January 23, 2019,<sup>32</sup> with respondent District Collector, informing the latter that it has no intention to abandon the subject shipments.

The following day, petitioner allegedly filed two separate Letter-Appeals, both dated January 25, 2019,<sup>33</sup> with respondent COC to lift the Decrees of Abandonment issued by respondent District Collector, and to release the subject shipments. In the same Letter-Appeals which were signed by petitioner's licensed customs brokers, Albert John P. Unica and Jerson M. Delos Reyes, petitioner reiterated the reasons in the delay in the filing of the goods and declarations such as late transmission of the shipping documents, undue delay in the approval and release of the import permits, and others.


Apart from the Letter-Appeals, petitioner likewise filed Motions to Set Aside/Recall the Order of Abandonment all dated January 31, 2019,<sup>34</sup> received by respondent District Collector on February 7, 2019, covering shipment numbers 1 to 11 above.

On February 27, 2019, respondent District Collector issued an Order<sup>35</sup> affirming the Decrees of Abandonment, the dispositive portion of which states:

WHEREFORE, premises considered, by authority vested in me by law, the Decree of Abandonment are hereby AFFIRMED covering the subject shipments without prejudice to claimant's right to appeal to the Customs Commissioner pursuant to Section 3 of CMO No. 18-2014 (Guidelines on Lifting and Order of Abandonment).

Let a copy of this Order be furnished all parties and Offices concerned for their information and guidance.

SO ORDERED.

The above Order was confirmed by respondent COC in his Consolidated Order dated April 1, 2019.<sup>36</sup> Petitioner claims that a copy of the same was received on May 3, 2019.<sup>37</sup> However, according to the Affidavit of Service executed by BOC's Legal Assistant, Bernabe G. Mendoza, Jr., service was made on May 2, 2019.<sup>38</sup> The Consolidated Order states: 

<sup>32</sup> Exhibit "P-17", Division Docket, Vol. 1, p. 123; Denied admission for failure to present the original for comparison per Resolution dated 29 September 2020, Division Docket Vol. 3, p. 1353.

<sup>33</sup> Exhibit "P-18", Division Docket, Vol. 1, p. 124-132; Denied admission for failure to present the original for comparison per Resolution dated 29 September 2020, Division Docket Vol. 3, p. 1353.

<sup>34</sup> Assailed Decision, *Rollo*, pp. 58-59; Exhibits "P-72" to "P-82", BOC Records, Folder 3, pp. 401-444, Folder 4, pp. 144-299 ad Folder 5, pp. 102-143.

<sup>35</sup> Exhibit "P-71", BOC Records, Folder 2, pp. 713-723.

<sup>36</sup> Exhibit "P-19", *id.*, pp. 724-739.

<sup>37</sup> Assailed Decision, *Rollo*, p. 61; Par. 1.13.1, Statement of the Relevant Facts and Antecedent Proceedings, Petitioner's Memorandum dated April 8, 2021, Division Docket, Vol. IV p. 1676.

<sup>38</sup> Assailed Resolution, *Rollo*, p. 115; Affidavit of Service executed by BOC's Legal Assistant, Bernabe G. Mendoza, Jr., BOC Records, Folder 2, pp. 743-744.

WHEREFORE, premises considered, the Order dated 27 February 2019 of the MICP District Collector affirming the Decree of Abandonment over the subject rice shipment is hereby AFFIRMED.

SO ORDERED.

On May 2, 2019, respondent COC promulgated a Resolution<sup>39</sup> approving the request of respondent District Collector for the public auction of the rice shipments. The same was received by petitioner on May 8, 2019.<sup>40</sup> The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, this Office APPROVES the request of the MICP District Collector for the public auction of the subject rice shipments covered by Decrees of Abandonment under Abandonment Proceeding Nos. 039-2019, 262-2018, 090-2019, 092-2019, 103-2019, 087-2019, 089-2019, 113-2019, 094-2019, 091-2019, 086-2019, 088-2019, 093-2019, 064-2019, 065-2019, 084-2019, 083-2019, 082-2019, 085-2019, 095-2019, 066-2019, 081-2019, 109-2019, 079-2019, 099-2019, 255-2019, 080-2019, 265-2018, 264-2018, 122-2019, 105-2019, 104-2019, 106-2019, 109-2019, 110-2019, 111-2019, 108-2019, 109-2019, 247-2018, 118-2019, 119-2019, 130-2018, 120-2019, 117-2019, 125-2018, 124-2018, 121-2018, 231-2018, 097-2019, 260-2018, 244-2018, 084-2019, 085-2019, 095-2019, 083-2019, 228-2018.

SO ORDERED.

Aggrieved and faced with the impending auction of the subject rice shipments initially scheduled on May 20, 22 and 24, 2019,<sup>41</sup> petitioner sought judicial review through the original petition, filed on May 21, 2019, raffled to the Court's Special Second Division.

In summary, the pertinent dates and corresponding events are as follows:

Date	Relevant Event
January 24, 2019	Petitioner filed Letter-Appeal, dated January 23, 2019, with respondent District Collector, informing the latter that it has no intention to abandon the subject shipments.
January 25, 2019	Petitioner's brokers filed separate Letter-Appeals, both dated January 25, 2019, with respondent Customs Commissioner Guerrero, requesting to lift the Decrees of Abandonment.

<sup>39</sup> Exhibit "P-20", BOC Records, Folder 2, pp. 627-659.

<sup>40</sup> Affidavit of Service executed by BOC's Legal Assistant, Bernabe G. Mendoza, Jr., BOC Records, Folder 2, pp. 633-635.

<sup>41</sup> Notices of Public Auction, Exhibits "P-21" to "P-24", Division Docket, Vol. 1, 232-282; Denied admission for failure to present the original for comparison per Resolution dated 29 September 2020, Division Docket Vol. 3, p. 1353.

January 31, 2019	Petitioner filed Motions to Recall before respondent MICP District Collector Austria to contest the Decrees of Abandonment.
February 27, 2019	Respondent District Collector issued the Order affirming the Decrees of Abandonment.
April 1, 2019	Respondent COC issued the Consolidated Order affirming respondent District Collector's Order dated February 27, 2019.
May 2, 2019	Respondent COC issued the Resolution approving respondent District Collector's request for the public auction of the rice shipments.
May 2, 2019	Petitioner received a copy of the Consolidated Order dated April 1, 2019
May 8, 2019 <sup>42</sup>	Petitioner received a copy of the Resolution dated May 2, 2019
May 21, 2019	Petitioner filed the original Petition for Review before the Court in Division.

After a full-blown trial, the Court in Division promulgated the Assailed Decision on June 28, 2022,<sup>43</sup> where it ruled in this wise:

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed by petitioner Victor R. del Rosario Rice Mill Corporation on 21 May 2019 is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.

Petitioner then sought for a reconsideration which was eventually denied in the Assailed Resolution, dated January 20, 2023.<sup>44</sup>

Hence, the elevation of the instant case before the Court *En Banc* on February 9, 2023.<sup>45</sup>

Respondents submitted their Comment through registered mail, on June 19, 2023.<sup>46</sup>

After noting petitioner's filing of its Reply on July 5, 2023,<sup>47</sup> the Court *En Banc* then submitted the instant case for decision on July 21, 2023.<sup>48</sup>

<sup>42</sup> Affidavit of Service executed by BOC's Legal Assistant, Bernabe G. Mendoza, Jr., BOC Records, Folder 2, pp. 633-635.

<sup>43</sup> *Supra* note 3.

<sup>44</sup> *Supra* note 4.

<sup>45</sup> *Supra* note 1.

<sup>46</sup> See Comment, *Rollo*, pp.152-184.

<sup>47</sup> See Reply (Re: Comment dated 19 June 2023), *id.*, pp. 223-240.

<sup>48</sup> See Notice of Resolution dated July 21, 2023, *id.*, pp. 243.

### *The Issues*<sup>49</sup>

- I. WHETHER THE COURT IN DIVISION ERRED IN DISMISSING THE ORIGINAL PETITION ON THE GROUND OF LACK OF JURISDICTION; AND
- II. WHETHER THE CONSOLIDATED ORDER DATED APRIL 1, 2019 AND THE RESOLUTION DATED MAY 2, 2019 OF RESPONDENT COMMISSIONER OF CUSTOMS SHOULD BE REVERSED AND SET ASIDE.

### *The Arguments*

In its Petition for Review, petitioner maintains that the Court in Division erred in dismissing the original petition due to lack of jurisdiction. It insists that appeals were filed before respondent COC in the form of Letter-Appeals dated January 25, 2019 and that the same have substantially complied with *Customs Memorandum Order (“CMO”) No. 18-2014*.<sup>50</sup> Further, petitioner raises that *CMO No. 17-2019*<sup>51</sup> has no application in the instant case. The Consolidated Order is not just a confirmation of the district collector’s Order but rather a decision of the respondent Commissioner which may be reviewed by the Court.

Petitioner also advances that the Consolidated Order, dated April 1, 2019, and the Resolution, dated May 2, 2019, must be reversed and set aside. In this regard, petitioner emphasizes that it was denied due process of law because it did not receive the Notice to Pay on January 12, 2019 and that the Decrees of Abandonment were not validly and lawfully issued because petitioner already paid in advance the customs duties and taxes in accordance with the BOC rules.<sup>52</sup>

On the other hand, respondent counters that (1) respondent COC’s Consolidated Order, dated April 1, 2019, confirming the Decrees of Abandonment against petitioner’s rice import shipments, are final, executory, and consequently not appealable and reviewable by the Court in Division; (2) petitioner was duly notified of its tax deficiencies prior to the issuance of the decrees of abandonment; (3) the Decrees of Abandonment declaring the subject shipments “deemed abandoned” were validly issued in accordance with *Section 119 of the CMTA*; and (4) the LBP Debit Advice Forms are not

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<sup>49</sup> See Petition for Review, *id.*, p. 20-21.

<sup>50</sup> Guidelines on Lifting an Order of Abandonment, dated and signed on September 25, 2014.

<sup>51</sup> Guidelines on the Recall/Lifting/Reconsideration/Setting Aside of any Order/Decree/Decision of Abandonment, dated and signed on April 15, 2019.

<sup>52</sup> See Petition for Review, *id.*, p. 13.



payment of customs duties for the subject rice shipments but are mere regulatory requirements of the NFA for the issuance of import permits.<sup>53</sup>

### *The Ruling of the Court*

*The instant Petition for Review  
was timely filed before the Court  
En Banc.*

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Under *Sections 3 (b), Rule 8 of the RRCTA*, a party adversely affected by a decision or resolution of a Division of the CTA on a motion for reconsideration or new trial may appeal to the Court *En Banc* by filing a petition for review within 15 days from receipt of the assailed decision or resolution.

Here, petitioner received the Assailed Resolution on January 25, 2023.<sup>54</sup> Counting 15 days therefrom, petitioner had until February 9, 2023 within which to file an appeal. Thus, the instant Petition was timely filed on even date.

We now proceed to the merits of the instant case. However, at this juncture, the Court *En Banc* notes that the issues raised by the petitioner are mere reiterations of the same matters sufficiently considered and addressed in the assailed Decision and assailed Resolution. As such, there is no reason for this Court to disturb the Court in Division's ruling. Nonetheless, We shall tackle once more petitioner's arguments to foreclose any doubt as to meritoriousness of the Court in Divisions' findings.

*The Court in Division lacks  
jurisdiction over the original  
petition.*

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The jurisdiction of the Court to rule on the decisions of COC is provided under *Section 7(a)(4) of Republic Act No. 1125*,<sup>55</sup> as amended by *RA No. 9282*,<sup>56</sup> which reads:

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided: *e*

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<sup>53</sup> See Comment, *id.*, p. 195.

<sup>54</sup> See Notice of Resolution dated January 20, 2023, received on January 25, 2023, *id.*, p. 106.

<sup>55</sup> An Act Creating the Court of Tax Appeals, June 16, 1954.

<sup>56</sup> 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; March 30, 2004.

....

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;

....

To implement the foregoing, *Section 3(a)(4), Rule 4 of the RRCTA* provides that appeals from the actions of COC lie with the Court in Division. Further, *Section 3, Rule 8* states that the party aggrieved by the decision or ruling of COC may appeal to the Court in Division within 30 days from the receipt thereof.

Here, petitioner maintains that the Consolidated Order, dated April 1, 2019, is the decision duly appealable to the Court. Thus, the 30-day period should be reckoned from its receipt thereof on May 2, 2019.

However, the Court in Division held that the Consolidated Order is not the decision appealable and reviewable by the Court. It was emphasized in the assailed Decision and assailed Resolution that petitioner should have instead filed an appeal before respondent COC on or before May 17, 2019, which is 15 days from May 2, 2019, pursuant to *Paragraphs 4 and 5 of CMO No. 17-2019* which state:

4. The District Collector shall have the authority to resolve any Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment within a period five (5) working days from its filing. Thereafter, the *District Collector shall transmit to the Office of the Commissioner for confirmation his/her Decision* within two (2) days from promulgation/issuance thereof.

5. The *Decision of the District Collector duly confirmed by the Office of the Commissioner shall become final and executory within fifteen (15) days from receipt by the owner/importer/consignee of the questioned Order/Decree/Decision unless appealed to the Commissioner* in the manner and time specified in *Section 114 of the CMTA*, which allows appeal from any decision/omission of the Bureau pertaining to an importation, exportation, or any legal claim.  
(Emphasis and italics supplied)

Petitioner, however, counters that it is *CMO No. 18-2014*, not *CMO No. 17-2019*, which should be deemed applicable in this case and that pursuant to the former, a valid appeal was filed with the COC on January 25, 2019, which was thereafter allegedly decided by the COC through the Consolidated Order dated April 1, 2019. *γ*

The Court *En Banc* disagrees.

*(a) CMO No. 17-2019 is applicable to the instant Petition*

*CMO No. 17-2019* was promulgated on April 15, 2019. It expressly provides that *CMO No. 18-2014* was thus repealed and that all other issuances that are inconsistent therewith were amended and modified accordingly.

Clearly, *CMO No. 17-2019* was already in effect when petitioner received the Consolidated Order on May 2, 2019. In such regard, We affirm the Court in Division's ruling that that the parameters with which to determine whether respondent COC's assailed Consolidated Order is the one contemplated by law and regulations as the decision appealable to and reviewable by this Court should then be based on the guidelines provided for in *CMO No. 17-2019*.

Contrary to petitioner's claim, applying *CMO No. 17-2019* does not entail giving it a retroactive application. While the Decrees of Abandonment were issued at the time *CMO No. 18-2014* was still in effect, the same decrees had yet to attain finality at the time the Consolidated Order was received by petitioner on May 2, 2019. Thus, upon such receipt, the administrative remedies afforded by *CMO No. 17-2019* are deemed applicable, and exhaustion of the same was required before a judicial appeal can be made.

Upon review of the Consolidated Order and all relevant records, We agree with the Court in Division that the same is a confirmation of the District Collector's order denying the Motion to Recall the Decrees of Abandonment, not a decision on an alleged appeal made to the COC. While the Court *En Banc* is aware that upon the issuance of the Consolidated Order (i.e. on April 1, 2019, prior to the effectivity of *CMO No. 17-2019* on April 15, 2019), the District Collector was not yet required to transmit to the COC the decision on a Motion to Recall, the fact of being a mere confirmation remains unnegated for a number of reasons.

First, the dispositive portion of the Consolidated Order is unequivocal that it was issued as an affirmation of the Order dated February 27, 2019:

**WHEREFORE**, premises considered, the Order dated 27 February 2019 of the MICP District Collector affirming the Decree of Abandonment over the subject rice shipment is hereby **AFFIRMED**.

SO ORDERED.

Second, there is neither reference to nor mere mention of the Letter-Appeals, dated January 25, 2029, in the Consolidated Order, making it appear

that the COC only took into consideration the forwarded Order, dated February 27, 2019, from the District Collector.

Third, records reveal that the Motions for Recall were filed by petitioner after the submission of the Letter-Appeals by the licensed customs brokers. Thus, it appears that it was not petitioner's intention to elevate the administrative appeal to respondent COC but to seek first a reconsideration before the office of respondent District Collector.

Such position was further bolstered by the fact that the Letter-Appeals were not filed by petitioner itself but by its licensed customs brokers – contrary to the mandate of the then effective *CMO No. 18-2014* which required appeals to the COC to be filed by consignee.<sup>57</sup>

We accordingly find it inconsistent for petitioner to expect a decision on its alleged Letter-Appeals when it actually pursued another administrative remedy with respondent District Collector.

*(b) Exhaustion of administrative remedies must be observed; appeal to the COC cannot be deemed futile*

Gleaning from the above discussions, We agree with the Court in Division that petitioner's next recourse from receipt of respondent COC's Consolidated Order would have been to file an appeal before the COC in the manner and time specified by *Section 114 of the CMTA* (i.e., within 15 days from receipt of the decision or order). To rule otherwise would run contrary to the well-established doctrine of exhaustion of administrative remedies which requires parties to resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before being elevated to the courts of justice for review.<sup>58</sup>

In petitioner's Reply<sup>59</sup> to respondent's Comment, it insists that it is absurd to suggest appealing the Consolidated Order to the COC as he is the same person who issued the same, allegedly making it a futile remedy. The Court *En Banc*, however, disagrees.

First, to insist that such appeal is futile would be to assail and invalidate the administrative procedure explicitly laid down by the BOC in *CMO No. 17-2019*. Paragraphs 4 and 5 thereof are clear that (a) an order denying a Motion to Recall shall be transmitted to the COC; (b) the COC shall confirm,

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<sup>57</sup> *Section 4 of CMO No. 18-2014* states that "(a)ll requests for deferral or delay in abandonment proceedings or lifting of any abandonment order must be done in writing by the Consignee and sent directly to the Commissioner for approval. x x x"

<sup>58</sup> Department of Energy v. Court of Tax Appeals, G.R. No. 260912, August 17, 2022.

<sup>59</sup> See Reply (Re: Comment dated 19 June 2023), *Rollo*, pp. 223-240.

such order; and (c) the duly confirmed decision of the District Collector shall attain finality unless appealed to the COC.

Second, giving the COC an opportunity to review a party's case is consistent with the doctrine of exhaustion of administrative remedy, which recognizes that an administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues.<sup>60</sup> Moreover, the COC is in a better position to effectively resolve the questions sought to be addressed and to expeditiously lift any decisions and further efforts of the BOC to auction off the subject shipments.

Third, the exercise of power to review will not be rendered futile if made in a manner compliant with *Paragraph 6 of CMO No. 17-2019* which states:

The appeal shall set forth new/specific arguments/grounds not raised in the Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment and with arguments which were simply glossed over, overlooked and/or not treated at all in the appealed Decision.

Indubitably, the BOC effectively recognizes in the above provision that in some instances, there are arguments and grounds which could not have been previously considered or could have been simply glossed over or overlooked by the COC in the review of the District Collector's order. Thus, in giving a party the opportunity to file an administrative appeal, it is required that such arguments and grounds be raised and emphasized. In which case, as long as the party-appellant complies with the foregoing requirements, the review cannot actually be deemed futile.

All told, we affirm the Court in Divisions' finding that the Consolidated Order is not the decision properly appealable to the Court and that due to petitioner's failure to file an appeal to the COC after its receipt of the Consolidated Order, the same has attained finality. Hence, the Court in Division lacked jurisdiction over the original petition.

As emphasized in the assailed Decision, settled is the rule that the right to an appeal is not a natural right or a part of due process — it is merely a statutory privilege that has to be exercised only in a manner and in accordance with the provisions of law and as prescribed by the pertinent regulations to implement the same. *g*

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<sup>60</sup> *Supra* note 56.

*Petitioner failed to prove the alleged violation of right to due process.*

In advancing its position that the Consolidated Order must be reversed and set aside, petitioner anchors its claim on the supposed violation of its right to due process because of respondent's alleged failure to notify petitioner of its tax deficiencies prior to the issuance of the Decrees of Abandonment. It maintains that it never received the Notice to Pay sent by respondent through electronic mail as required by *Section 1129 of CMTA*, which states:

SEC. 1129. Abandonment, Kinds and Effects of. – Imported goods are deemed abandoned under any of the following circumstances:

(a) When the owner, importer, or consignee of the imported goods expressly signifies in writing to the District Collector the intention to abandon the same; or

(b) When the owner, importer, consignee, or interested party after due notice, fails to file the goods declaration within the prescribed period in Section 407 of this Act: Provided, That the term goods declaration shall include provisional or incomplete goods declaration deemed valid by the Bureau as provided in Section 403 of this Act. For this purpose, it is the duty of the District Collector to post a list of all packages discharged and their consignees, whether electronically or physically in the District Office, or send a notice to the consignee within five (5) days from the date of discharge; or

(c) Having filed such goods declaration, the owner, importer, consignee or interested party after due notice, fails to pay the assessed duties, taxes and other charges thereon, or, if the regulated goods failed to comply with Section 117 of this Act, within fifteen (15) days from the date of final assessment: Provided, That if such regulated goods are subject of an alert order and the assessed duties, taxes and other charges thereof are not paid within fifteen (15) days from notification by the Bureau of the resolution of the alert order, the same shall also be deemed abandoned; or

(d) Having paid the assessed duties, taxes and other charges, the owner, importer or consignee or interested party after due notice, fails to claim the goods within thirty (30) days from payment. For this purpose, the arrastre or warehouse operator shall report the unclaimed goods to the District Collector for disposition pursuant to the provisions of this Act; or

(e) When the owner or importer fails to claim goods in customs bonded warehouses within the prescribed period.

*The due notice requirement under this section may be provided by the Bureau through electronic notice or personal service:* Provided, That for non-regular importers, notification shall be by registered mail or personal service. For this purpose, the accreditation of importers, exporters, and other third parties shall include provision for mandatory receipt of electronic notices.

(Emphasis and italics supplied) *g*

From the above provision, service of notice through electronic means is permitted for regular importers. Here, petitioner can be rightfully considered as regular importer not only based on the number of shipments involved in the instant case but also as testified by petitioner's witness, Wally C. Maniego, during the cross-examination held on June 6, 2019:

Assoc. Sol. Noble:

Q: (Is it since) 2013 that you've been working with Mr. Delos Reyes?

Mr. Maniego:

A: Opo.

Assoc. Sol. Noble:

Q: How long (has Mr. Delos Reyes been) engaged by petitioner as its Customs Broker?

Mr. Maniego:

A: Hindi ko po maano kung 2 to 3 years na yata.

Assoc. Sol. Noble:

Q: So do you agree with me if I say that the petitioner is a regular importer of rice?

Mr. Maniego:

A: Yes, sir.<sup>61</sup>

For purposes of proving due notice, respondent submitted a certified true copy of the electronic mail print out of the Notice to Pay sent to petitioner via its official email address registered with the BOC at 3:34 pm on January 12, 2019.

Petitioner, however, insists that such evidence presented deserves scant consideration. It cites *Paragraph 7 of CMO No. 16-2019*,<sup>62</sup> where it was prescribed that electronic service shall be proven by an acknowledgement of the consignee or interested party or by an affidavit of the party serving the notice, thus:

7. Proof of personal service shall consist of a written admission of the owner, importer, consignee, or interested party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. ***Proof of electronic service shall (be) made by the acknowledgement of the owner, importer, consignee, or interested party served, or by such affidavit of the party serving the same.*** √

<sup>61</sup> Transcript of Stenographic Notes ("TSN"), Hearing on June 6, 2019 p. 30.

<sup>62</sup> Guidelines on the Sending of Notice Under Section 1129 (Abandonment, Kinds and Effects) of the CMTA, dated March 18, 2019, signed March 25, 2019.

(Emphasis and italics supplied)

Here, respondent did not present any acknowledgement by petitioner of the receipt of the notice through electronic mail or an affidavit of the serving party, as required in the above provision.

However, the Court *En Banc* finds that the application of *CMO No. 16-2019* is misplaced. The Notice to Pay was sent to petitioner on January 12, 2019, before such issuance was signed by respondent COC on March 25, 2019. Thus, the additional requirement cannot be applied to the instant case.

To stress, “statutes, including administrative rules and regulations, operate prospectively unless the legislative intent to the contrary is manifest by express terms or by necessary implication because the retroactive application of a law usually divests rights that have already become vested. This is based on the Latin maxim: *Lex prospicit non respicit* (the law looks forward, not backward).”<sup>63</sup>

Moreover, We affirm the Court in Division’s application of the Supreme Court’s ruling in the case of *Chevron Philippines, Inc., vs. Commissioner of the Bureau of Customs*,<sup>64</sup> where it was held that a regular importer falls under the category of a knowledgeable importer which is familiar with the governing rules and procedures in the release of importations. Thus, notice to petitioner was unnecessary as it was already fully aware that its shipment had arrived at the Philippine ports. Similarly applied, petitioner is also deemed aware of the assessment issued against it.

In fact, petitioner’s cognizance is apparent in the various Motions to Set Aside/Recall filed in relation to Abandonment Proceeding Nos. 090-2019,<sup>65</sup> 092-2019,<sup>66</sup> 103-2019,<sup>67</sup> 087-2019,<sup>68</sup> 089-2019,<sup>69</sup> 113-2019,<sup>70</sup> 094-2019,<sup>71</sup> 091-2019,<sup>72</sup> 086-2019,<sup>73</sup> 088-2019,<sup>74</sup> and 093-2019.<sup>75</sup>

In these motions, petitioner uniformly claimed that the values of its importation were allegedly erroneously appraised higher than the real transaction value; thus, it requested the cancellation of the entries on October,

<sup>63</sup> Republic of the Philippines vs. Larrazabal, Sr., et al., G.R. No. 204530, July 26, 2017.

<sup>64</sup> G.R. No. 178759, August 11, 2008.

<sup>65</sup> BOC Records, Folder 3, pp. 401-421.

<sup>66</sup> *Id.*, pp. 422-444.

<sup>67</sup> BOC Records, Folder 4, 273-299.

<sup>68</sup> *Id.*, pp. 253-272.

<sup>69</sup> *Id.*, pp. 233-252.

<sup>70</sup> *Id.*, pp. 207-232.

<sup>71</sup> *Id.*, pp. 186-206.

<sup>72</sup> *Id.*, pp. 165-185.

<sup>73</sup> *Id.*, pp. 144-164.

<sup>74</sup> BOC Records, Folder 5, 123-143.

<sup>75</sup> *Id.*, pp. 102-122.



1, 2018 (i.e., after the assessments were issued and months before the Notice to Pay was sent to petitioner). By such statement, petitioner revealed its awareness that the shipments have arrived in the Philippine ports, that import entry declarations have actually been filed, and that assessments were issued against such shipments.

Accordingly, petitioner failed to prove its claim that there was violation of due process rights due to an alleged lack of notice.

*Petitioner failed to prove the alleged payment of customs duties and taxes assessed in relation to the subject shipments.*

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According to petitioner, there can be no implied abandonment of the subject shipments, pursuant to *Section 1129 (c) of the CMTA* considering that it filed the goods declaration and it paid in advance the customs duties and taxes as evidenced by the Debit Advice Forms required to be submitted under the rules of respondents.

We, however, find this contention unmeritorious and find the same LBP Debit Advice Forms insufficient to prove the alleged payment.

During cross-examination, petitioner's witness, Rumbaoa, testified as follows:

Assoc. Sol. Noble:

Q: In your answer to Question No. 4, you mentioned that you also processed the advance payment of customs duties required for National Food Authority rice importation program, is that correct?

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: So is it correct to say that this Debit Advice that were debited to petitioner's accounts were in compliance with NFA's requirement for issuance of petitioner's importation permits?

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: Now, you claimed that these amounts debited to petitioner's accounts were credited to the Customs accounts with your bank, is that correct?

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: **Are these accounts immediately credited to the Customs accounts or are they credited every time an assessment notice is issued?**

Ms. Rumbaoa:

A: **Every time there is an assessment notice issued.**

Assoc. Sol. Noble:

Q: **So it is not credited immediately after the account of the petitioner is debited?**

Ms. Rumbaoa:

A: **Yes, sir.**

Assoc. Sol. Noble:

Q: So you mentioned of the P350 Million debited to petitioner's account, there is an outstanding balance of P67 Million, is that correct?

Ms. Rumbaoa:

A: Yes.

Assoc. Sol. Noble:

Q: And of the P41 Million debited to petitioner's account, there is an outstanding balance of P13 Million?

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: Ms. Witness, are you aware that the shipments subject to this case are not the only rice importations of petitioner during the covered period?

Ms. Rumbaoa:

A: No, sir.

Assoc. Sol. Noble:

Q: So you are not aware as to the number of petitioner's shipments?

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: But in your answer to Question No. 14, you said that "of the outstanding balances, is available for client's proper disposition?"

Ms. Rumbaoa:

A: Yes, sir. ✓

Assoc. Sol. Noble:

Q: **Is it correct to say that the list of shipments which had the corresponding assessment notices and accounts and the amounts debited therein as Customs payments are listed here?**

Ms. Rumbaoa:

A: Yes, sir.

Assoc. Sol. Noble:

Q: **However, for this purpose, you cannot identify which (of) the shipments subject of these cases were in fact paid by petitioner?**

Ms. Rumbaoa:

A: **Only those entries that processed through the payment application secure system are (indicated) on the amount credited in the Bureau of Customs.**

Assoc. Sol. Noble:

Q: **Do you have those lists, Ms. Witness?**

Ms. Rumbaoa:

A: **I have at the office, sir.**

Assoc. Sol. Noble:

Q: Was the petitioner furnished copy of that, Ms. Witness?

Ms. Rumbaoa:

A: Yes, sir.

Justice Castaneda:

Clarification, (y)ou mentioned that (payments) of Customs duties are (based) on the assessment notices?

Ms. Rumbaoa:

A: Yes, Your Honors.

Justice Castaneda:

Those assessment notices pertain to a particular shipment?

Ms. Rumbaoa:

A: Yes, Your Honors.

Justice Castaneda:

**Do you have a copy of (these) documents?**

Ms. Rumbaoa:

A: **Yes, Your Honors. We have a copy of the single administrative document of those they paid and we credited it to the Bureau of Customs.**

Justice Castaneda:

**All right, can you present (these) in Court?** μ

Ms. Rumbaoa:  
A: **It is in our office, Your Honors.**

Justice Castaneda:  
Proceed.

Assoc. Sol. Noble:  
Q: So I just like to clarify Ms. Witness, at the time that these accounts were debited, they were not yet deemed as payment of petitioner's importations?

Ms. Rumbaoa:  
A: Not yet, Your Honors. As it was required only as advance payment for Customs duties which will be applied every time there is a request for payment from Bureau of Customs through the payment application secure system.  
(Emphasis supplied)

It can be gleaned from the above testimony that the debit from petitioner's account does not automatically translate to a direct credit to respondent's account for payment of taxes and duties. Instead, the amounts debited were merely earmarked for future payments to the BOC. The crediting to respondent's account shall only be processed after the issuance of assessment notices.

The foregoing procedures are consistent with those laid down in *Customs Administrative Order ("CAO") No. 10-2008*,<sup>76</sup> which states:

4.2.3 . . . (T)he final payment will be *debited by the concerned (Authorized Agent Bank) from the designated debit account upon receipt of the final payment instructions from Customs* via the payment gateway, subject to the *bank's confirmation and security procedures for payment instructions*.

4.2.4 *Transmittal of Payment Confirmation*. In all cases of payment instructions received, the AABs should complete the collection and thereafter *transmit a payment confirmation to the electronic gateway payment* unless there is no sufficient balance in the debit account.  
(Emphasis and italics supplied)

In this regard, We agree with the Court in Division in holding that the "Payment Confirmation" referred to in *Section 4.2.4* above should have been presented by petitioner to prove due payment of taxes.

Moreover, witness Rumbaoa likewise testified that the bank has in its custody the list of shipments processed for payment, together with copies of the single administrative documents pertinent thereto. At the very least,

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<sup>76</sup> Payment Application Secure System Version 5.0 (PASS5), dated November 12, 2008, approved by the Secretary of Finance on November 28, 2008.

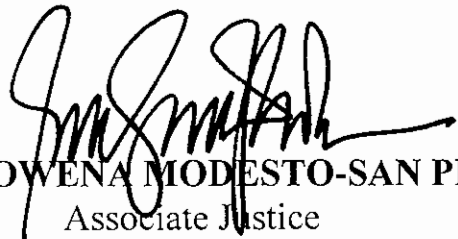
petitioner should have submitted these lists and documents. However, no such evidence were offered.

We thus confirm the Court in Division's finding that payment of the assessed customs duties and taxes were not duly proven by petitioner. Hence, the position that the issuance of the Decrees of Abandonment is void due to an alleged payment of the pertinent taxes has no leg to stand on.

In sum, the Court in Division indeed had no jurisdiction over the original petition. Assuming that the case could be ruled upon, however, petitioner still cannot be deemed entitled to the proceeds of the auction sale as it was not established that the Decrees of Abandonment were invalidly issued due to the alleged violation of petitioner's right to due process and the alleged payment of duties and taxes.


**ACCORDINGLY**, premises considered, the instant Petition for Review is hereby **DENIED**. The Decision, dated June 28, 2022, and the Resolution, dated January 20, 2023, of the Court's Special Second Division are hereby **AFFIRMED**.


**SO ORDERED.**

  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

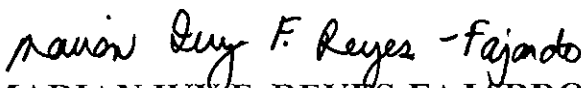
**WE CONCUR:**

*(Inhibited)*  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

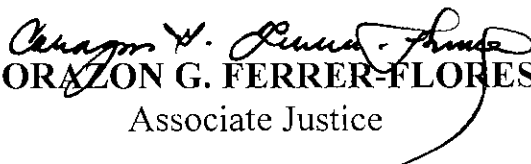
  
**MA. BELEN M. RINGPIS-LIBAN**  
Associate Justice

  
*(With Concurring Opinion)*  
**CATHERINE T. MANAHAN**  
Associate Justice

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

  
**LANEE S. CUI-DAVID**  
Associate Justice

  
**CORAZON G. FERRER-FLORES**  
Associate Justice

  
**HENRY S. ANGELES**  
Associate 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.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY

EN BANC

**VICTOR R. DEL ROSARIO** CTA EB No. 2731  
**RICE MILL CORPORATION,** (CTA Case No. 10082)  
*Petitioner,*

Present:

*-versus-*

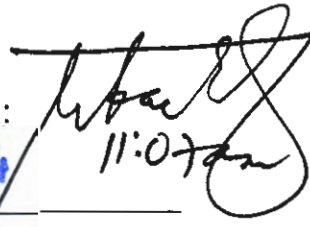
**HON. REY LEONARDO B. GUERRERO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF CUSTOMS, ATTY. ERASTUS SANDINO AUSTRIA, IN HIS OFFICIAL CAPACITY AS DISTRICT COLLECTOR MANILA INTERNATIONAL CONTAINER PORT, AND THE BUREAU OF CUSTOMS,**

**DEL ROSARIO, P.J., RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES, and ANGELES, JJ.**

*Respondents.*

Promulgated:

JUL 18 2024




X - - - - - X

**CONCURRING OPINION**

**MANAHAN, J.:**

I agree with the conclusion reached in the *ponencia* by denying the instant Petition for Review on the ground of lack of jurisdiction.

A perusal of the records shows that, in the Court in Division's Resolution dated September 29, 2020,<sup>1</sup> the Court in Division denied the admission of Exhibits "P-17" and "P-18", which purport to be petitioner's Letter-Appeal dated January 24, 2019 to respondent District Collector (DC), and Letter-Appeal dated January 25, 2019 to respondent Commissioner of Customs (COC), respectively.

<sup>1</sup> Division Docket, Vol. III, pp. 1352-1353. 

**CONCURRING OPINION**

CTA EB No. 2731

Page 2 of 2

In view of the exclusion of the foregoing pieces of evidence, the same should not be considered as part of the records of the case. Therefore, it is as if no appeal was filed by petitioner before the DC and the COC. In other words, petitioner failed to prove that it exhausted its available administrative remedies before resorting to the Court of Tax Appeals (CTA).

There being no appeal filed before the COC, it necessarily follows that there is no decision of the COC reviewable by the CTA, pursuant to Section 7(4) of Republic Act No. 1125, as amended. It provides:

“SEC. 7. Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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;”

Thus, the undersigned agrees with the *ponencia* that “due to petitioner’s failure to file an appeal to the COC after its receipt of the Consolidated Order, the same has attained finality.”

Considering the foregoing, I vote to **DENY** the Petition for Review.

  
**CATHERINE T. MANAHAN**  
Associate Justice