680 Phil. 681

# SECOND DIVISION

# [ G.R. No. 179579, February 01, 2012 ]

## COMMISSIONER OF CUSTOMS AND THE DISTRICT COLLECTOR OF THE PORT OF SUBIC, PETITIONERS, VS. HYPERMIX FEEDS CORPORATION, RESPONDENT.

## D E C I S I O N

**SERENO, J.:**

Before us is a Petition for Review under Rule 45,[1] assailing the Decision[2] and the Resolution[3] of the Court of Appeals (CA), which nullified the Customs Memorandum Order (CMO) No. 27-2003[4] on the tariff classification of wheat issued by petitioner Commissioner of Customs.

The antecedent facts are as follows:

On 7 November 2003, petitioner Commissioner of Customs issued CMO 27-2003. Under the Memorandum, for tariff purposes, wheat was classified according to the following: (1) importer or consignee; (2) country of origin; and (3) port of discharge.[5] The regulation provided an exclusive list of corporations, ports of discharge, commodity descriptions and countries of origin. Depending on these factors, wheat would be classified either as food grade or feed grade. The corresponding tariff for food grade wheat was 3%, for feed grade, 7%.

CMO 27-2003 further provided for the proper procedure for protest or Valuation and Classification Review Committee (VCRC) cases. Under this procedure, the release of the articles that were the subject of protest required the importer to post a cash bond to cover the tariff differential.[6]

A month after the issuance of CMO 27-2003, on 19 December 2003, respondent filed a Petition for Declaratory Relief[7] with the Regional Trial Court (RTC) of Las Piñas City. It anticipated the implementation of the regulation on its imported and perishable Chinese milling wheat in transit from China.[8] Respondent contended that CMO 27-2003 was issued without following the mandate of the Revised Administrative Code on public participation, prior notice, and publication or registration with the University of the

Philippines Law Center.

Respondent also alleged that the regulation summarily adjudged it to be a feed grade supplier without the benefit of prior assessment and examination; thus, despite having imported food grade wheat, it would be subjected to the 7% tariff upon the arrival of the shipment, forcing them to pay 133% more than was proper.

Furthermore, respondent claimed that the equal protection clause of the Constitution was violated when the regulation treated non-flour millers differently from flour millers for no reason at all.

Lastly, respondent asserted that the retroactive application of the regulation was confiscatory in nature.

On 19 January 2004, the RTC issued a Temporary Restraining Order (TRO) effective for twenty (20) days from notice.[9]

Petitioners thereafter filed a Motion to Dismiss.[10] They alleged that: (1) the RTC did not have jurisdiction over the subject matter of the case, because respondent was asking for a judicial determination of the classification of wheat; (2) an action for declaratory relief was improper; (3) CMO 27-2003 was an internal administrative rule and not legislative in nature; and (4) the claims of respondent were speculative and premature, because the Bureau of Customs (BOC) had yet to examine respondent's products. They likewise opposed the application for a writ of preliminary injunction on the ground that they had not inflicted any injury through the issuance of the regulation; and that the action would be contrary to the rule that administrative issuances are assumed valid until declared otherwise.

On 28 February 2005, the parties agreed that the matters raised in the application for preliminary injunction and the Motion to Dismiss would just be resolved together in the main case. Thus, on 10 March 2005, the RTC rendered its Decision[11] without having to resolve the application for preliminary injunction and the Motion to Dismiss.

The trial court ruled in favor of respondent, to wit:

> **WHEREFORE**, in view of the foregoing, the Petition is GRANTED and the subject Customs Memorandum Order 27-2003 is declared INVALID and OF NO FORCE AND EFFECT. Respondents Commissioner of Customs, the District Collector of Subic or anyone acting in their behalf are to immediately cease and desist from enforcing the said Customs Memorandum Order 27-2003.
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> SO ORDERED.[12]

The RTC held that it had jurisdiction over the subject matter, given that the issue raised by respondent concerned the quasi-legislative powers of petitioners. It likewise stated that a petition for declaratory relief was the proper remedy, and that respondent was the proper party to file it. The court considered that respondent was a regular importer, and that the latter would be subjected to the application of the regulation in future transactions.

With regard to the validity of the regulation, the trial court found that petitioners had not followed the basic requirements of hearing and publication in the issuance of CMO 27-2003. It likewise held that petitioners had "substituted the quasi-judicial determination of the commodity by a quasi-legislative predetermination."[13] The lower court pointed out that a classification based on importers and ports of discharge were violative of the due process rights of respondent.

Dissatisfied with the Decision of the lower court, petitioners appealed to the CA, raising the same allegations in defense of CMO 27-2003.[14] The appellate court, however, dismissed the appeal. It held that, since the regulation affected substantial rights of petitioners and other importers, petitioners should have observed the requirements of notice, hearing and publication.

Hence, this Petition.

Petitioners raise the following issues for the consideration of this Court:

I. THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH THE LAW AND PREVAILING JURISPRUDENCE.

II. THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THE TRIAL COURT HAS JURISDICTION OVER THE CASE.

The Petition has no merit.

We shall first discuss the propriety of an action for declaratory relief.

Rule 63, Section 1 provides:

> *Who may file petition*. - Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for

a declaration of his rights or duties, thereunder.

The requirements of an action for declaratory relief are as follows: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[15] We find that the Petition filed by respondent before the lower court meets these requirements.

First, the subject of the controversy is the constitutionality of CMO 27-2003 issued by petitioner Commissioner of Customs. In *Smart Communications v. NTC*,[16] we held:

> The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. **Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.** Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

Meanwhile, in *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary,*[17] we said:

> xxx [A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. xxx
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> In addition such rule must be published. On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.
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> **Accordingly, in considering a legislative rule a court is free to make three inquiries:*(i)* whether the rule is within the delegated authority of the administrative agency; *(ii)* whether it is reasonable; and *(iii)* whether it was issued pursuant to proper procedure.** But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to

> administrative judgments and not to judicial judgments. In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to *(i)* give the force of law to the rule; *(ii)* go to the opposite extreme and substitute its judgment; or *(iii)* give some intermediate degree of authoritative weight to the interpretative rule. (Emphasis supplied)

Second, the controversy is between two parties that have adverse interests. Petitioners are summarily imposing a tariff rate that respondent is refusing to pay.

Third, it is clear that respondent has a legal and substantive interest in the implementation of CMO 27-2003. Respondent has adequately shown that, as a regular importer of wheat, on 14 August 2003, it has actually made shipments of wheat from China to Subic. The shipment was set to arrive in December 2003. Upon its arrival, it would be subjected to the conditions of CMO 27-2003. The regulation calls for the imposition of different tariff rates, depending on the factors enumerated therein. Thus, respondent alleged that it would be made to pay the 7% tariff applied to feed grade wheat, instead of the 3% tariff on food grade wheat. In addition, respondent would have to go through the procedure under CMO 27-2003, which would undoubtedly toll its time and resources. The lower court correctly pointed out as follows:

> xxx As noted above, the fact that petitioner is precisely into the business of importing wheat, **each and every importation will be subjected to constant disputes which will result into** (sic) **delays in the delivery, setting aside of funds as cash bond required in the CMO as well as the resulting expenses thereof. It is easy to see that business uncertainty will be a constant occurrence for petitioner. That the sums involved are not minimal is shown by the discussions during the hearings conducted as well as in the pleadings filed**. It may be that the petitioner can later on get a refund but such has been foreclosed because the Collector of Customs and the Commissioner of Customs are bound by their own CMO. Petitioner cannot get its refund with the said agency. We believe and so find that Petitioner has presented such a stake in the outcome of this controversy as to vest it with standing to file this petition.[18] (Emphasis supplied)

Finally, the issue raised by respondent is ripe for judicial determination, because litigation is inevitable[19] for the simple and uncontroverted reason that respondent is not included in the enumeration of flour millers classified as food grade wheat importers. Thus, as the trial court stated, it would have to file a protest case each time it imports food grade wheat and be subjected to the 7% tariff.

It is therefore clear that a petition for declaratory relief is the right remedy given the

circumstances of the case.

Considering that the questioned regulation would affect the substantive rights of respondent as explained above, it therefore follows that petitioners should have applied the pertinent provisions of Book VII, Chapter 2 of the Revised Administrative Code, to wit:

> Section 3. *Filing*. - (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the bases of any sanction against any party of persons.
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> xxx xxx xxx
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> Section 9. *Public Participation*. - (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
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> (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.
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> (3) In case of opposition, the rules on contested cases shall be observed.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.[20]

Likewise, in *Tañada v. Tuvera,*[21] we held:

> **The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens.** Without such notice and publication, there would be no basis for the application of the maxim "*ignorantia legis non excusat*." **It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a**

**constructive one.**

> Perhaps at no time since the establishment of the Philippine Republic has the publication of laws taken so vital significance that at this time when the people have bestowed upon the President a power heretofore enjoyed solely by the legislature. While the people are kept abreast by the mass media of the debates and deliberations in the *Batasan Pambansa* - and for the diligent ones, ready access to the legislative records - no such publicity accompanies the law-making process of the President. **Thus, without publication, the people have no means of knowing what presidential decrees have actually been promulgated, much less a definite way of informing themselves of the specific contents and texts of such decrees**. (Emphasis supplied)

Because petitioners failed to follow the requirements enumerated by the Revised Administrative Code, the assailed regulation must be struck down.

Going now to the content of CMO 27-3003, we likewise hold that it is unconstitutional for being violative of the equal protection clause of the Constitution.

The equal protection clause means that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. Thus, the guarantee of the equal protection of laws is not violated if there is a reasonable classification. For a classification to be reasonable, it must be shown that (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[22]

Unfortunately, CMO 27-2003 does not meet these requirements. We do not see how the quality of wheat is affected by who imports it, where it is discharged, or which country it came from.

Thus, on the one hand, even if other millers excluded from CMO 27-2003 have imported food grade wheat, the product would still be declared as feed grade wheat, a classification subjecting them to 7% tariff. On the other hand, even if the importers listed under CMO 27-2003 have imported feed grade wheat, they would only be made to pay 3% tariff, thus depriving the state of the taxes due. The regulation, therefore, does not become disadvantageous to respondent only, but even to the state.

It is also not clear how the regulation intends to "monitor more closely wheat importations and thus prevent their misclassification." A careful study of CMO 27-2003 shows that it not only fails to achieve this end, but results in the opposite. The application of the regulation forecloses the possibility that other corporations that are excluded from the list import food grade wheat; at the same time, it creates an assumption that those who meet the criteria do not import feed grade wheat. In the first case, importers are unnecessarily

burdened to prove the classification of their wheat imports; while in the second, the state carries that burden.

Petitioner Commissioner of Customs also went beyond his powers when the regulation limited the customs officer's duties mandated by Section 1403 of the Tariff and Customs Law, as amended. The law provides:

> *Section 1403. - Duties of Customs Officer Tasked to Examine, Classify, and Appraise Imported Articles.* - The customs officer tasked to examine, classify, and appraise imported articles **shall determine whether the packages designated for examination and their contents are in accordance with the declaration in the entry, invoice and other pertinent documents and shall make return in such a manner as to indicate whether the articles have been truly and correctly declared in the entry as regard their quantity, measurement, weight, and tariff classification and not imported contrary to law.** He shall submit samples to the laboratory for analysis when feasible to do so and when such analysis is necessary for the proper classification, appraisal, and/or admission into the Philippines of imported articles.
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> Likewise, **the customs officer shall determine the unit of quantity in which they are usually bought and sold, and appraise the imported articles in accordance with Section 201 of this Code.**
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> Failure on the part of the customs officer to comply with his duties shall subject him to the penalties prescribed under Section 3604 of this Code.

The provision mandates that the customs officer must first assess and determine the classification of the imported article before tariff may be imposed. Unfortunately, CMO 23-2007 has already classified the article even before the customs officer had the chance to examine it. In effect, petitioner Commissioner of Customs diminished the powers granted by the Tariff and Customs Code with regard to wheat importation when it no longer required the customs officer's **prior** examination and assessment of the proper classification of the wheat.

It is well-settled that rules and regulations, which are the product of a delegated power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law; and that it be not in contradiction to, but in conformity with, the standards prescribed by law.[23]

In summary, petitioners violated respondent's right to due process in the issuance of CMO 27-2003 when they failed to observe the requirements under the Revised Administrative Code. Petitioners likewise violated respondent's right to equal protection of laws when they

provided for an unreasonable classification in the application of the regulation. Finally, petitioner Commissioner of Customs went beyond his powers of delegated authority when the regulation limited the powers of the customs officer to examine and assess imported articles.

**WHEREFORE**, in view of the foregoing, the Petition is **DENIED.**

**SO ORDERED**.

*Carpio, (Chairperson), Brion, Perez,* and *Reyes, JJ.,* concur.

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[1] *Rollo*, pp. 124-142.

[2] Id. at 33-46.

[3] Id. at 47.

[4] Records, pp. 16-18.

[5] SUBJECT: Tariff Classification of Wheat

In order to monitor more closely wheat importations and thus prevent their misclassification, the following are hereby prescribed:

1. For tariff purposes, wheat shall be classified as follows:

1.1 Under HS 1001.9090 (Food Grade) when all the following elements are present:

1.1.1 the importer/consignee of the imported wheat is a flour miller as per attached list (Annex `A'), which shall form as integral part of this Order
1.1.2 the wheat importation consists of any of those listed in Annex `A' according to the country of origin indicated therein
1.1.3 the wheat importation is entered/unloaded in the Port of Discharge indicated opposite the name of the flour miller, as per Annex `A'

1.2 Under HS 1001.9010 (Feed Grade)

1.2.1 When any or all of the elements prescribed under 1.1 above is

not present.

1.2.2 All other wheat importations by non-flour millers, i.e., importers/consignees NOT listed in Annex `A'

[6] SUBJECT: Tariff Classification of Wheat

xxx xxx xxx

2. Any issue arising from this Order shall be resolved in an appropriate protest or VCRC case.

3. In case of a VCRC case, the following applies:

3.1 The shipment may qualify for Tentative Release upon payment of the taxes and duties as per declaration and the posting of cash bond to cover the tariff differential.

3.2 The Tentative Release granted by the VCRC shall, prior to the release of the shipment from Customs custody, be subject to representative. For this purpose, the District/Port Collector concerned shall forward to the Office of the Commissioner the Tentative Release papers, together with all pertinent shipping and supporting documents, including, but not limited to, contract of sale, phytosanitary certificate and certificate of quality.

In the case of Outports, the required documents shall be faxed to the Office of the Commissioner of Customs to any of these numbers: 527-1953/527-4573.

3.3 In resolving the classification issue, the VCRC shall consider the import/consignee, type/source of wheat and port of discharge of the wheat importation, as indicated in Annex `A', and require the proofs/evidences (sic), including, but not limited to, proofs of sale or consumption of said wheat importation, certificate of quality issued by manufacturing country and contract of sale.

3.4 Any VCRC decision adverse to the government shall be subject to automatic review by the Commissioner of Customs.

[7] *Rollo*, pp. 158-168.

[8] Records, p. 12.

[9] *Rollo*, pp. 58-59.

[10] Id. at 60-78.

[11] Id. at 108-114; penned by Judge Romeo C. De Leon.

[12] Id. at 114.

[13] Id. at 112.

[14] Id. at 117-122.

[15] *Tolentino v. Board of Accountancy*, 90 Phil. 83 (1951).

[16] 456 Phil. 145 (2003).

[17] G.R. No. 108524,10 November 1994, 238 SCRA 63, 69-70.

[18] *Rollo*, p. 112.

[19] *Office of the Ombudsman v. Ibay*, 416 Phil. 659 (2001).

[20] *CIR v. Michel J. Lhuiller Pawnshop Inc.,* 453 Phil. 1043 (2003).

[21] 220 Phil. 422 (1985).

[22] *Philippine Rural Electric Cooperatives Association, Inc. v. DILG*, 451 Phil. 683 (2003).

[23] *Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund*, 389 Phil. 296 (2000).