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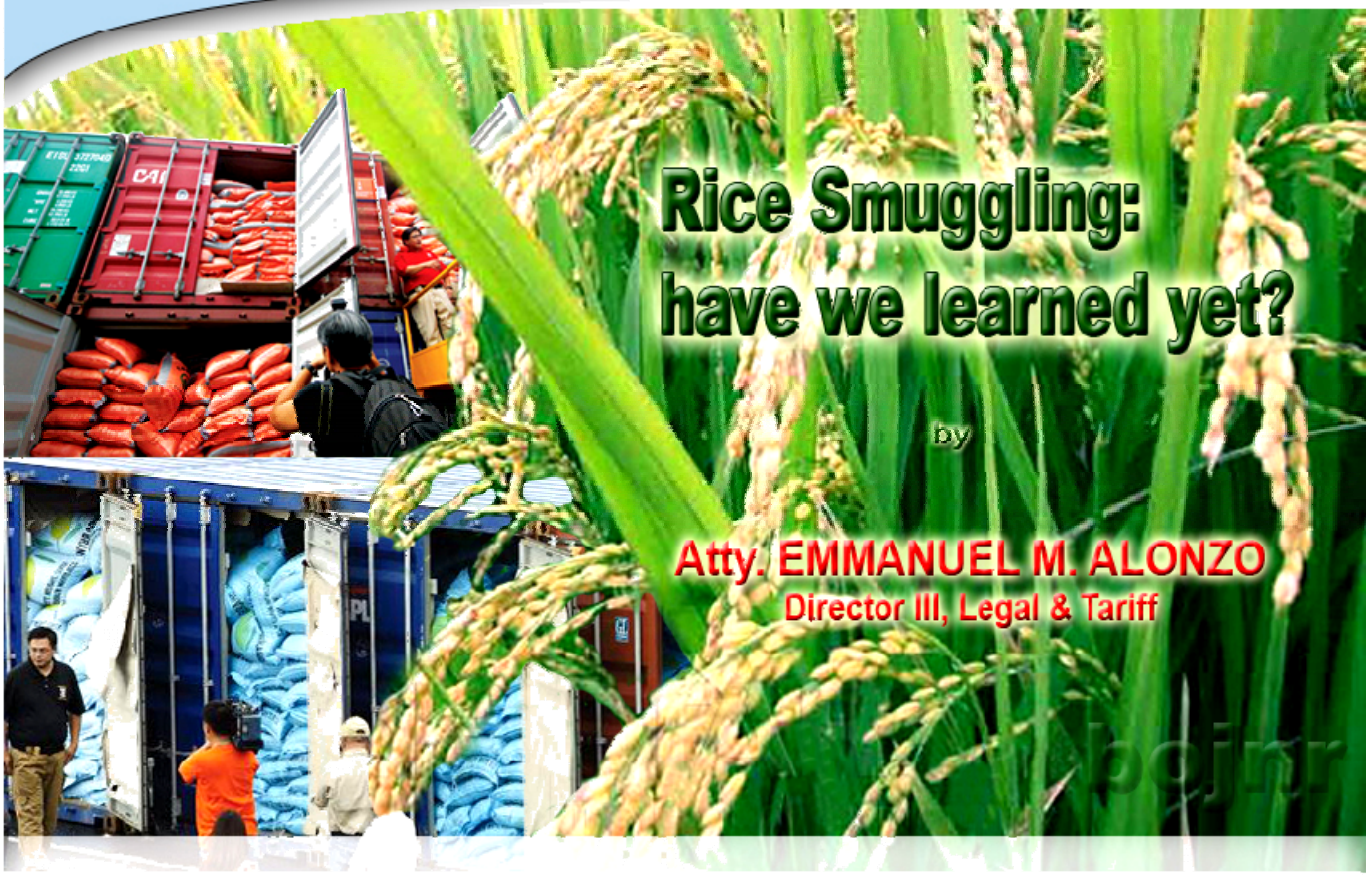

Government plan

In July 2012, President Aquino addressed an audience at the Department of Agriculture (DA) saying the country would attain sufficiency in rice production through the DA's irrigation program and the use of certified seeds. In contrast with the situation during the past administration wherein the Philippines was forced to import two million metric tons of rice to fill in a shortage.[1]

From January 23 to 27, 2013, the World Economic Forum was held in Davos-Klosters, Switzerland to discuss world economic issues. During the Forum, President Aquino reiterated his government's goal of attaining rice sufficiency, even turning the country into an exporter before the end of 2013.[2]

However, industry leaders are apprehensive of the government's goal of rice self-sufficiency due to rampant rice smuggling into the country. Smuggled rice are sold below production cost, hence "killing" the domestic industry.

This prompted Senate President Juan Ponce Enrile to deliver a privilege speech on July 25, 2012 on the smuggling of 420,000 sacks of rice from India worth half a billion pesos. Several public hearings followed.[3]

Later, the rice smuggling of Vietnamese rice at several Philippine ports was included in the said public hearings.

[1] Newsinfo.inquirer.net/223975/no-need-to-import-rice-next-year-aquino.
[2] Newsinfo.inquirer.net/347007/aquino-ph-self-sufficient-in-rice-by-end-of-year.
[3] Public hearings regarding the Indian rice smuggling were held on August 1, 13, 22, 29; September 5, 12, 19; and December 10 and 17.

Protik Guha, CEO of India-based Amira Foods International, reads his statement before the Senate agriculture committee. He and several SBMA officials were issued show-cause orders by the Senate, which threatened to cite them in contempt for contradictory statements on the alleged rice smuggling at the Freeport. JAMIN VERDE, INTERAKSYON.COM

Rice smuggling[4]

In 2012, rice was smuggled through the ports of Subic, Legaspi City, Davao and Cebu. It was misdeclared as slag, wood wall, tiles, used clothing, or construction materials. Rice smuggled through Mindanao was shipped to Luzon and sold at P1,200 per sack, below the usual price of P1,400 of locally milled *palay* (unhusked rice) that traders and millers buy at P17.50 per kilo. The NFA usually bought only 5% of the total palay harvest.

Based on the BOC documents, rice smuggled through Davao and Cebu ports came from China. Some P450 million worth of Indian white rice were intercepted at the Subic Freeport. At least 94,000 bags of rice on board the vessel MINH Tuan 68 from Vietnam was seized at Legaspi port.

According to Mr. Rosendo So of the party-list ABONO, *"Smuggling is killing the local rice industry, and if farmers and millers close shop since they could not compete with smuggled rice, the government can kiss their rice sufficiency target goodbye."*

The Indian rice

The rice cargo left Kandla, India for Indonesia as the original port of destination. However, the cargo arrived in Indonesia one day late, henceforth the Indonesian consignee rejected the import. In order to lessen the loss, the owner decided to amend the bill of lading by changing the point of destination from the original Indonesia to Subic port in the Philippines.

As a result, a contract was signed between the owner and Metro Eastern, a locator of the Subic Bay Metropolitan Authority (SBMA). In the contract, Metro Eastern was designated as the consignee of the cargo. The contract was signed while the vessel containing the cargo was still in Indonesian waters. The cargo was not even allowed to disembark in the Indonesian port. The cargo was redirected to the Subic port. The choice was deliberate considering that Subic is a freeport, considered as outside the tax jurisdiction of the Philippines.

The problem with the cargo was that it did not have the permit to import from the NFA, rice being a regulated commodity in the Philippines. In spite of the lack of permit, the cargo was allowed to disembark and was warehoused in Subic. The entry documents stated that the rice was only for transhipment, hence taxes and duties were not paid.

While the rice was being stored in the Metro Eastern warehouse, the owner and the assigned consignee, Metro Eastern, looked for persons holding valid NFA import permits capable of selling the imported rice domestically. Thus, decision to seek domestic buyers changed the position of consignees/ owners from a mere transshipment to an importation destined for domestic consumption.

The BOC, knowing the defect in the importation process, issued a warrant of seizure and detention for the cargo, and held hearings for the forfeiture of the rice import.

Amending the Bill of Lading (B/L)

Bear in mind that the B/L was changed while the cargo is in transit from Indonesia to the Philippines (Subic port). Could it be done?

As a general rule, the B/L may be amended. In the Far East, the requirement is that the amendment must be made within 48 hours before the berthing time. It is also allowed in Southern India, the port of origin of the rice import. The Philippines issued the following matrix of charges for changes in the B/L (effective February 24, 2012):

Charge Description	Charge Code	Charge Amount (in US dollars)
B/L surrender fee	BSF	30 per B/L
Extra B/L	EBL	30 per B/L
B/L amendment fee	MAF	30 per amendment
Certificate fee	CER	30 per certificate
Container preparation charge (exports)	CPC	20 per 20' 14 per 40'
Equipment maintenance fee (imports)	EMF	7 per 20' 14 per 40'

[4] The data and the opinion expressed regarding rice smuggling came from Mr. Rosendo So, Chairman of the party list ABONO and Director of the Swine Development Council. Source: Party-list group bares rice smuggling "hotspots", Perseus Echeminada, Philippine Star, January 8, 2013.

Amendments[5] to the B/L are allowed by Article 15 of the United Nations Convention on the Carriage of Goods by the Sea. However, the carrier should never issue further B/L without first procuring surrender and cancellation of the original B/L.

The choice of the port of entry

The Subic port is a port of convenience because of its dual nature, an ordinary port as well as a freeport. As an ordinary port, any imports are subject to regular BOC inspection and import processing. Usually, imports pass the Subic port (as an ordinary port of entry) if they are destined for domestic consumption. The accompanying taxes and duties are paid before the imports leave the Subic port.

In the case of the Indian rice, the entry declaration stated that it was for transhipment only. It meant that the rice import was intended to be re-exported, meaning, it was not supposed to be sold domestically. Such being the case, taxes and duties were not paid. However, the cargo was allowed to be unloaded and was even warehoused in a Subic facility, the Metro Eastern.

While being stored in a freeport warehouse, the BOC jurisdiction over the goods would start only after 30 days from unloading. After the lapse of the 30 days, the BOC can exert its authority by asking for the NFA permit to import which the owners never had. Before the lapse of 30 days, the owner and consignee (Metro Eastern) sought out NFA permit holders. According to the NFA rules, only NFA permit holders may import and sell rice to the domestic market.

The BOC and the SBMA must wait between 60 to 90 days before they could formally seize abandoned smuggled goods[6].

The consignee and owner were successful in finding NFA permit holders, unfortunately, they were not able to sell the import.

The BOC exerted its authority by seizing the cargo with the intention of disposing it by public bidding.

The NFA bidding process[7]

In 2012, the Philippines needed a total of 500,000 mt of imported rice in order to augment the deficit in domestic production. The NFA imported only 120,000 mt, allocating the rest (380,000 mt) as the open portion. The 120,000 mt NFA importation was a government to government deal with Vietnam.

The 380,000 mt (open portion) was allocated to 105 farmer-cooperatives and 19 rice traders. For the open portion, the service fee was from P2,000 to P6,500 per mt. For farmer-cooperatives, the service fee was P8,000 per mt, while rice traders paid P10,000 per mt. Of the 97 trader-bidders, only 19 won. As of December 2012, all importation allocations were filled up.

The importers have 60 days from the notice to proceed. After which the winning bidder could start to import provided that all the logistical requirements were met. In case valid problems were raised during the importation process, the NFA gives an extension of another 30 day period. The maximum period for importation was 90 days. However, the NFA imposes penalties to the importers before the extension period of 30 days. These were guidelines set by the NFA Council.

The NFA gave the importer 60 days to import because the importations are scheduled to coincide with the lean months, starting July until September. During this period the rice inventory in the country was low. The NFA did not allow the importers to bring in rice from abroad during the major harvest time of October and November when the rice harvest was in full swing because it would increase the level of supply in the market and would depress the price at the farm gate. In other words, the NFA gave the importers a small window within which rice may be imported. As

[5] The following data in the B/L may be amended: (a) the general nature of the goods, the loading marks necessary for identification of the goods, an express statement, if possible, as to the dangerous character of the goods, an express statement, if possible, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the shipper, (b) the apparent condition of the goods, (c) the name and the principal place of business of the carrier, (d) the name of the shipper, (e) the consignee if named by the shipper, (f) the port of lading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of lading, (g) the port of discharge under the contract of carriage by the sea, (h) the number of originals of the B/L, if more than one, and (i) the place of issuance of the B/L.

[6] Statement of the BOC Commissioner Biazon during the July 2012 public hearing and reported in the Philippine Daily Inquirer (July 25, 2012, Gil C. Cabacungan).

[7] The data on NFA importations were made by Atty. Jose D. Cordero, Assistant Administrator for Marketing Operations of the NFA during the public hearing on December 17, 2012.

a result of the practice, the farm gate prices of "palay" increased through the years to the benefit of the local farmers.

During the previous administrations, and under normal circumstances, the bidding for the private sector-financed importations were done ahead, in December through January and at the very latest, February. The NFA Council delayed the approval of import volumes while waiting for the Department of Agriculture to certify to the domestic production volumes. Such bidding took place by the third week of March. By the time the notice to proceed was given to the importer, it would be the last days of April.

In 2012, the government allotted a greater share to the private sector of the 500,000 metric tons of rice. The NFA Council decided to bid out the import rights for 380,000 mt to the private sector, divided equally between traders and farmer's cooperatives. The remaining 120,000 tons was to be bought by the NFA from countries with which it had purchase agreements, such as Thailand and Vietnam.

The bidding procedures in May, the NFA Council, led by Agriculture Secretary Proceso J. Alcala and other representatives from the financial sector, including the Department of Finance, and Trade and Industry, awarded rice import permits for 190 farmer's cooperatives. The problems started because 190 cooperatives were far too many and hard to manage, and the NFA experienced trouble checking the authenticity of the submitted documents.

There were "badges of fraud" in the documents because the cooperatives were bidding too high, considering that the private sector bidders must pay tariffs/duties and taxes amounting to millions of pesos for the importation. In a way, the high bids from the private sector would be advantageous to the government because the NFA also imports rice.

In 2011, the Philippines was allowed to import 860,000 tons, of which 200,000 tons was brought by the NFA. The 660,000 tons was shouldered by the private sector. The limit was 5,000 tons per cooperative, and the rest was apportioned among the traders. With the limit of 5,000 tons per cooperative only 12 cooperatives were given import permits. Twelve (12) was a manageable number. The NFA was able to visit and personally check if they were legitimate organizations.

The rice traders/cooperatives

Of the existing 190 farmer's cooperatives spread out in Luzon, Visayas and Mindanao, some unscrupulous smugglers were able to come in. Some of the farmer's cooperatives allowed themselves to be "used".

During the Senate public hearings, it was found out that the rice traders who bidded for an allocation of rice imports were dummies. Financiers looked for registered rice traders who were willing to participate in the NFA bidding. The financiers were the ones who took charge in producing all the documents needed. The funds, amounting to millions of pesos, required for the bidding were likewise provided for by the financiers.

Upon finding willing farmer's cooperatives to participate in the NFA bidding, the financiers would advise them to create juridical entities. More often than not, sole proprietorships, being easier to manipulate, were used as the vehicle in the bidding process. The owners of these sole proprietorships were neither rice farmers, nor have any knowledge of farming. Experience in rice trading/farming was not a requirement in the bidding process. In the public hearings of the Senate, it was found out that the bidders were in their twenties and were not famers because they were employees of companies unrelated to the rice industry.

In the case of rice cooperatives, the financiers urged them to form a federation. Federations are more manageable than dealing with individual farmer's cooperatives.

What then were the incentive promised to the participating rice traders and cooperatives?

Firstly, the participants would not spend anything in the bidding process. It was the financiers who took care of all the financing requirements. Secondly, the financiers promised the participating rice traders/ cooperatives P5 per bag (usually totalling P100,000) once they win in the NFA bidding and they were able to sell the rice import domestically. During the public hearings, the rice traders/cooperatives said that they did not execute deeds of assignment in favor of the financiers, although some of them said that they executed special powers of attorneys. They further said that their relationships with their financiers were based on pure trust.

The whole scheme, however, did not work as planned. Somehow, the rice traders/cooperatives revealed that their financiers did not inform them of the arrival of the rice imports. Worse, they were not able to realize the promised P5 per bag, or P100,000, for all the efforts they exerted. They were taken for a ride by their financiers.

Before any rice importation, the importer must first win the NFA bidding. The winning bidder then signs a contract with the NFA allowing the winning bidder to proceed with the importation. The importer may either be importer, or a trader.

Badges of fraud

The Senate Blue Ribbon Committee discovered the following:

1. Some farmers' cooperatives neither had adequate capitalization nor gross sales to afford the NFA service fee ranging from 50 to 69 million pesos in order to make importations in order to satisfy their bidded quotas.

2. Some of the winning bidders transacted with the same banks.

3. Different winning bidders registered with the Department of Trade and Industry (DTI) on the same date.

4. A lot of winning bidders have the same supplier that issued certifications to supply them with rice just a day after the invitation to bid was published.

5. A group of bidders all appointed one person as its representative.

Even the former NFA chief, Mr. Angelito T. Banayo, was quoted by the Philippine Daily Inquirer (September 16, 2012) as saying that the NFA had problems checking on the status and qualifications of the cooperatives. He also admitted that he entertained doubts about the genuineness of some of the farmers' cooperatives as they were bidding too high considering that the private sector needed to pay tariffs and taxes amounting to millions of pesos for the importations.

The NFA said[8] that if an importer gets an NFA allocation for the open market, such importer would earn P10 to P50 per bag of rice. However, such statement was countered by Senate President Juan Ponce Enrile by saying that such importer should earn at least P100 per bag in order to recover the cost of capital, rice import, freight, insurance, handling, and trucking, among others.

The winning bidders awarded allocations to import by the NFA were required to present their supporting documents. If the winning bidders sold their allocations, the NFA required the submission of special powers of attorney (SPAs). The NFA never questioned the reasons why SPAs were being submitted. The NFA defended itself by saying that the farmer-cooperatives were given priority in the importation process for them to earn money. The NFA was aware that some of the cooperatives did not have enough capital to import, hence they were forced to look for financiers.

The BOC is currently implementing a "single window" for all importations, including rice. Under the single window program, all government agencies participating in the importation of rice are linked to a centralized computer system. In this manner, all quotas granted by the NFA for rice importation shall be known by the BOC thereby eliminating the recycling of the quotas. Upon importation, the BOC will have the capability to know whether the quota of a certain importer has been used up or not. The rule is that before the arrival of the rice import, the importer must be in possession of an NFA permit to import.

BOC action[9]

The Bureau of Customs filed the appropriate charges against 31 officers of four (4) Central Luzon based Multi-Purpose cooperatives at the Department of Justice (DOJ) for their involvement, as consignees, in an attempt to smuggle into the country 78,000 bags of Vietnam rice worth P93.6 million through the Legaspi port. The illegal rice shipment arrived in the same boat on September 2, 2012 without the required import permit in violation of Sections 101 and 3601 of the Tariff and Customs Code of the Philippines (TCCP).

The BOC[10] charged before the DOJ five (5) officers of an importing firm and their broker for attempting to smuggle into Subic port 20,000 bags of Vietnam rice worth P30 million.

[8] Statement of Mr. Jose D. Cordero, Assistant Administrator for marketing Operations, National Food Authority (NFA), during the public hearing on rice smuggling on December 17, 2012.

[9] Reproduced from the news item was published in the Official Gazette of the Republic of the Philippines, a press release from the Department of Finance (DOF) and the Bureau of Customs (BOC) dated January 10, 2013, entitled 31 charged by Customs for rice smuggling, www.goc.ph/2013/01/10/31-

The 20,000 bags arrived in Subic on June 20, 2012 and stacked in 40 40-foot containers declared as "gypsum board" in order to avoid the import permit required from the NFA.

The BOC seized the 430,000 50-kg sacks of rice abandoned at the Subic freeport worth P450 million. The Indian rice arrived at Subic without the mandatory documents. Nobody came forward to claim it within the 30-day period for filing an entry. The BOC and the SBMA must wait between 60 days and 90 days before they could formally seize the abandoned smuggled goods.

Policy direction

The following are suggestions to deter rice smuggling:

1. **Return to government monopoly** – Rice smuggling has its roots in allowing the private sector to import the commodity. Return to the government monopoly in rice importation will avoid the participation of dubious financiers taking advantage the lack of funding of the rice farmers/traders.

2. **Providing support to importing farmers/ traders –** Senate President Juan Ponce Enrile suggested that if it is the intention of the government to allow the private sector to import rice, then financial help should be given to the farmer/trader importers in the form of loans. In this way, the benefits of importation would trickle down to the rice framer/trader.

3. **Increase the import quota allocation to the private sector -** Valenzuela Representative Magtanggol Gunigundo is in accord with Senator Francis Pangilinan that import quota *"could be a contributing factor to rice smuggling".* Quoting Gunigundo:

   "Quotas restrict the entry of a regulated commodity and those who fail to get permits can collude and conspire with permit holders to alter, reuse or counterfeit import permits that currently do not have bar codes and other safeguards to prevent illegal use. There seems to be no system or official responsible for tracking and monitoring the usage of the NFA's import permits at present[11]".

4. **Use the BOC x-ray machines –** Senate President commented – *"What happened to the x-ray worth $140 million bought by the government that they didn't see that what was in the almost 1,000 container vans was rice?[12]".* The comment was made in connection with the misdeclaration of rice import in its import entry. Instead of declaring rice as the import, the importer declares another product like "gypsum board" in order to evade the NFA permit, rice being a regulated product.

5. **Use NFA accountable forms –** During the September 12, 2012 Senate public hearing, the committee uncovered a modus operandi of smugglers in which licensed NFA importers provide the needed documents to legitimize the entry of smuggled rice. Each licensed rice importer has an allowed volume of importation which is reduced every time the trader seeks a memorandum of undertaking from the NFA to cover a rice shipment. During the public hearing, NFA Assistant Administrator Jose Cordero admitted that the documents of the NFA were printed on **non-accountable forms.**

   Being non-accountable forms, the import permits **might** be used over and over again. In the past, many people have become wealthy peddling recycled documents. Therefore, there must be proper auditing of NFA forms.

6. **The Anti-smuggling bill** – Several versions of anti-smuggling bills have been filed both in the Senate and the House of Representatives. Two (2) versions of the bill have been passed in third reading in the House of Representatives in past decade. However, subject matter is still under consideration in both Houses of Congress. Perhaps, all issues regarding rice smuggling may be addressed once an anti-smuggling bill is enacted into law.

[10] Jerome Aning, 6 charged in Subic rice smuggle try, Philippine Daily Inquirer, September 21, 2012.

[11] Gil C. Cabacungan, Rice import cuts spurred smuggling- Pangilinan, Philippine Daily Inquirer, August 22, 2012 (Wednesday).

[12] Norman Bordadora, Enrile names broker of seized rice from India, Philippine Daily Inquirer, July 27, 2012 (Friday).

I. COMMISSIONER OF INTERNAL REVENUE, Petitioner, vs. FORTUNE TOBACCO CORPORATION, *Respondent. G.R. No. 180006, September 28, 2011, Brion, J.*

Facts:

The Commissioner of Internal Revenue (CIR), pursuant to its rule-making powers, issued Revenue Regulation (RR) No. 17-99 to implement the 12% increase in specific taxes as per Section 145 of the Tax Code of 1997.

In view of the above, respondent Fortune Tobacco Corporation (FTC) paid excise taxes in advance for the year 2003 in the amount of P11.15 billion. Likewise for the period of January 1 to May 31, 2004, FTC paid P4.90 billion in excise taxes.

In June 2004, FTC filed an administrative claim for refund with the CIR for illegally and/or erroneously collected taxes totaling P491 million, hinging on the allegation that it was an "*unauthorized administrative legislation*." As stated in the decision:

> *"Specifically, it assails the proviso in Section 1 of RR 17-99 that requires the payment of the 'excise tax actually being paid prior to January 1, 2000' if this amount is higher than the new specific tax rate, i.e., the rates of specific taxes imposed in 1997 for each category of cigarette, plus 12%. It claimed that by including the proviso, the CIR went beyond the language of the law and usurped Congress' power. X x x"*

Issue:

The issue in this case is whether FTC is correct in assailing Section 1 of RR 17-99 for being an unauthorized administrative legislation.

The CIR alleges that the proviso in the questioned RR *"was made to carry into effect the law's intent and is well within the scope of his delegated legislative authority. To the CIR, the adoption of the 'higher tax rule' during the transition period unmistakably shows the intent of Congress not to lessen the excise tax collection."*

Held:

The Supreme Court (SC) sided with FTC. It declared:

> *"By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower that the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99* ***effectively imposes a tax*** *which is the higher amount between the ad valorem tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12% - a situation not supported by the plain wording of Section 145 of the Tax Code."* (Emphasis supplied)

The SC further added that Republic Act (RA) No. 8240 was enacted not mainly for the purpose of collecting revenue. The Court opined:

> *"That RA 8240 (incorporated as Section 145 x x x) was enacted to raise government revenues is a given fact, but this is not the sole and only objective of the law. Congressional deliberations show that the shift from ad valorem to specific taxes introduced by the law was also intended to curb the corruption that became endemic to the imposition of ad valorem. Since ad valorem taxes were based on the value of the goods, the prices of the goods were often manipulated to yield lesser taxes. The imposition of specific taxes, which are based on the volume of goods produced, would prevent price manipulation and also cure the unequal tax treatment created by the skewed valuation of similar goods."*

The Court also decided that Section 1 of RR 17-99 runs counter to the rule of uniformity in taxation. Said the SC:

> *"The Constitution requires that taxation should be uniform and equitable. Uniformity in taxation requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities. This requirement, however, is unwittingly violated when the proviso in Section 1 of RR 17-99 is applied in certain cases. X x x."*

The SC made an illustration by taking into consideration three brands of cigarettes classified as lower-priced under Section 145(c)(4) of the Tax Code of 1997. The Court proclaimed:

> *"Although the brands all belong to the same category, the proviso in Section 1, RR 17-99 authorized the imposition of different (and grossly disproportionate) tax rates x x x. It effectively extended the qualification stated in the third paragraph of Section 145(c) of the 1997 tax code that was supposed to apply only during the transition period x x x.*
>
> *"In the process, the CIR also perpetuated the unequal tax treatment of similar goods that was supposed to be cured by the shift from ad valorem to specific taxes."*

Finally, the SC said that:

> *"Evidently, the 1997 Tax Code's provisions on excise taxes have omitted the adoption of certain tax measures. To our mind, these omissions are telling indications of the intent of Congress not to adopt the omitted tax measures; they are not simply unintended lapses in the law's wording that, as the CIR claims, are nevertheless covered by the spirit of the law. Had the intention of Congress been solely to increase revenue collection, a provision similar to the third paragraph of Section 145(c) would have been incorporated in Sections 141 and 142 of the 1997 Tax Code. This, however, is not the case."*

The En Banc (EB) Decision of the Court of Tax Appeals (CTA) dated 12 July 2007 and its Resolution of 4 October 2007 in CTA EB No. 228 were affirmed by the SC.

On an added note, it has been espoused that:

"*Delegation of legislative power refers to the grant of authority by the legislature to administrative agencies to issue rules and regulations concerning how the law entrusted to them for implementation may be enforced. Delegation of legislative power has become more and more frequent, if not necessary. X x x"* (Agpalo, Ruben E.: Administrative Law, Law on Public Officers and Election Law, p. 62).

This is so because administrative agencies are specialized government entities concentrating on a particular field of expertise. The legislature cannot be expected to know all the nitty gritty of things when it comes to sophisticated undertakings, hence the delegation. Of course, the law must be complete and sufficient.

In connection with the above, it should be noted that RA No. 10351 was approved on December 19, 2012. The same is entitled:

> ***"AN ACT RESTRUCTURING THE EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS BY AMENDING SECTIONS 141, 142, 143, 144, 145, 8, 131 AND 288 OF REPUBLIC ACT NO. 8424. OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9334, AND FOR OTHER PURPOSES."***

Subsequently, the Bureau of Internal Revenue (BIR) issued RR No. 17-2012 (December 21, 2012) to implement RA No. 10351. The RR is entitled:

> ***"Revenue Regulations (RR) No. 17-2012 (December 21, 2012). - Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations."***

SYNOPSIS

Republic Act (RA) No. 10351, which took effect on 1 January 2013, was enacted for the dual purpose of preventing further degradation of the health of Filipinos and to raise revenue, particularly to:

> *"(a) Deter young people from smoking and drinking alcohol, and protect them from the lifetime consequences of smoking and alcohol abuse;*
>
> *"(b) Reduce the consumption of cigarettes and alcohol, thus decreasing the health and healthcare costs of tobacco and alcohol use; and*
>
> *"(c) Finance a universal health care program to improve accessibility to quality health care."* (Senate Bill No. [SBN] 3249]

Said law amended several provisions of the National Internal Revenue Code (NIRC), as amended, relating to excise tax on distilled spirits, wines, fermented liquor (Chapter III, Secs. 141, 142 and 143), tobacco and cigars and cigarettes (Chapter IV, Secs. 144 and 145). The law likewise amended provisions concerning payment of excise taxes on imported alcohol and tobacco products, disposition of incremental revenues and duty of the Commissioner of Internal Revenue (CIR) to ensure the provision and distribution of forms receipts, certificates, appliances and acknowledgment of payment of taxes (Secs. 8, 131 and 288).

The new law in a nutshell, shall levy on distilled spirits an *ad valorem* tax of 15% of its net retail price (NRP) (excluding the excise tax and the value-added tax) per proof plus a *specific* tax of P20.00 per proof liter.

On January 1, 2015, the *ad valorem* tax shall be increased to 20%, while the *specific* tax will still be pegged at P20.00 per proof liter. Through Revenue Regulations (RR) to be issued by the Secretary of the Department of Finance (DOF), the specific tax shall be increased by 4% every year thereafter commencing on January 1, 2016. [Sec. 141]

Sec. 142 of the NIRC, as amended, was further amended to provide increases on the excise tax on:

(1) Sparkling wines and champagnes - P250.00 and P700.00, depending on the NRP.

(2) Still wines. - P30.00 and P60.00, depending on alcohol content.

The rates of tax herein imposed shall be increased by 4% every year thereafter beginning 1 January 2014, through RRs issued by the DOF.

The rates on fermented liquors shall be based on NRP per liter as follows:

Effectivity	**Excise Tax per Liter**	
	NRP per liter ≤ **P50.60**	NRP per liter> **P50.60**
1 January 2013	P15.00	P20.00
1 January 2014	P17.00	P21.00
1 January 2015	P19.00	P22.00
1 January 2016	P21.00	P23.00
1 January 2017	P23.50	

Effective 1 January 2018, and every year thereafter, the above rates shall be raised by 4%, via RRs issued by the DOF. With respect to those brewed and sold at micro-breweries or small establishments, the rate of P28.00 per liter commencing on 1 January 2013 shall be imposed. This rate shall be augmented by 4% every year thereafter starting on 1 January 2014, pursuant to RRs published by the DOF (Sec. 143).

On tobacco products (Sec. 144) other than those specially prepared for chewing so as to be unsuitable for use in any other manner, the rate was increased from P1.00 on each kilogram to P1.75, effective 1 January 2013. On those specially prepared for chewing, the rate was increased from P0.79 per kilogram to P1.50 commencing on 1 January 2013. Through RRs to be issued by the DOF, the above rates shall be increased by 4% every year thereafter effective 1 January 2014.

With respect to cigars (Sec. 145[A]), an *ad valorem* tax equivalent to 20% of the NRP and a specific tax of P5.00 per cigar shall be imposed. The latter shall be increased by 4% come 1 January 2014 through RRs to be issued by the DOF.

As for cigarettes packed by hand (Sec. 145[B]), an excise tax of P12.00 per pack shall be imposed beginning 1 January 2013. Said amount increases yearly to P15.00, P18.00, P21.00 and P30.00 starting 1 January 2014 up to 1 January 2017. The above rates shall increase by 4% every year via RRs issued by the DOF. Finally, all hand-packed cigarettes shall be packed in 20s effective 1 January 2013.

For cigarettes packed by machine (Sec. 145[C]), the rates are as follows:

Effectivity	**Excise Tax per pack**	
	NRP per pack ≤ **P11.50**	NRP per pack > **P11.50**
1 January 2013	P12.00	P25.00
1 January 2014	P17.00	P27.00
1 January 2015	P21.00	P28.00
1 January 2016	P25.00	P29.00

Effectivity	**Excise Tax per pack**	
1 January 2017	NRP per pack ≤ **P11.50**	NRP per pack > **P11.50**
	P30.00	

The tax herein imposed shall be increased by 4% every year thereafter, effective 1 January 2018 through RRs issued by the DOF.

The incremental revenue from RA No. 8240 under Sec. 288 (B) has been aligned to be exclusively utilized for programs to promote economically viable alternatives for tobacco farmers and workers like: (a) those that will provide inputs, training, and other support for those who shift to other agricultural products; (b) those that provide financial support; (c) cooperative activities to help farmers in planting alternative crops or other livelihood endeavors; (d) those that will develop tourism potential of tobacco-growing provinces; (e) infrastructure projects; and (f) agro-industrial concerns.

The provision on incremental revenues from excise tax on alcohol and tobacco products (Sec. 288[C]) has been amended to reflect the concerns relative to health issues. It is now provided that the net revenue (after deducting the allocations under RA Nos. 7171 and 8240) shall be allocated in the following manner: 80% for the universal health care and 20% for medical assistance and health enhancement facilities program of the Department of Health.

II. RIZAL COMMERCIAL BANKING CORPORATION, Petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, Respondent. G.R. No. 170257, September 7, 2011, Mendoza, J.

Facts:

Petitioner Rizal Commercial Banking Corporation (hereinafter, RCBC), a corporation authorized to engage in general banking operations in the Philippines, filed its annual income tax returns (ITR) for foreign currency deposit unit (FCDU) dealings for the years 1994 and 1995 within the time prescribed by law. Subsequently on August 15, 1996, it received Letter of Authority (LA) No. 133959 from the Commissioner of Internal Revenue (CIR). Said LA authorized a special audit team to examine the books and accounts for all internal revenue taxes beginning January 1, 1995 to December 31, 1995.

On January 23, 1997, RCBC executed two (2) waivers of the defense of prescription pursuant to the Tax Code covering the above years, effectively extending the time of the Bureau of Internal Revenue (BIR) to assess up to December 31, 2000. On January 27, 2000, the bank received a formal letter of demand with assessment notices from the BIR, detailing the deficiency tax assessments.

RCBC filed a protest on February 24, 2000 and subsequently submitted the vital documents to support the same. On November 20, 2000 RCBC filed a petition for review with the Court of Tax Appeals (CTA), based on Section 228 of the Tax Code of 1997. On December 6, 2000 the bank received a Formal Letter of Demand with Assessment Notices dated October 20, 2000, subsequent to its request for reinvestigation. The same reduced the original amount of deficiency taxes. RCBC paid the deficiency taxes on December 6, 2000, but refused to settle the assessment for deficiency onshore tax and documentary stamp tax (DST). The latter taxes are subject of its petition for review.

The bank argued that the waivers it executed were invalid because the same was not signed or conformed to by the CIR. With respect to the deficiency FCDU onshore tax, it contends that since the same was collected in the form of a final withholding tax (FWT), it is the borrower as withholding agent, which should be primarily liable for its remittance. The case reached the CTA First Division. RCBC appealed the same to the CTA En Banc.

The CTA En Banc denied the petition of RCBC for lack of merit. The CTA held that by receiving, accepting and paying portions of the reduced assessments, the bank bound itself by the new assessment. Said acts, said the CTA En Banc, implies that RCBC recognized the legality of the waivers. With respect to the deficiency onshore tax, it decided that because the payor-borrower was just designated by the Tax Code to withhold and remit the said tax, it would follow that the same should be imposed on RCBC as it is the payee-bank. Lastly, in connection with the deficiency DST on RCBCs special savings account (SSA), the CTA En Banc declared that the bank's SSA was a certificate of deposit and hence subject to the DST. RCBC settled its obligation regarding the FCDU Onshore Income tax for the years 1994 and 1995. Only two issues remain to be settled.

Issues:

1. *"Whether petitioner, by paying the other tax assessment covered by the waivers of the statute of limitations, is rendered estopped from questioning the validity of the said waivers with respect to the assessment of deficiency onshore tax."*

2. *"Whether petitioner, as payee-bank, can be held liable for deficiency onshore tax, which is mandated by law to be collected at source in the form of a final tax."*

Held:

On the first problem, the Supreme Court (SC) declared that petitioner RCBC is estopped from questioning the validity of the waivers it made. The Court ruled:

> *"Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that 'an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.' A party is precluded from denying his own acts, admissions or representations to the prejudice of the other party in order to prevent fraud or falsehood.*
>
> *"Estoppel is clearly applicable to the case at bench. RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted the validity of those waivers. Had petitioner truly believed that the waivers were invalid and that the assessments were issued beyond the prescriptive period, then it should not have paid the reduced amount of taxes in the revised assessment. RCBC's subsequent action effectively belies its insistence that the waivers are invalid. The records show that on December 6, 2000, upon receipt of the revised assessment, RCBC immediately made payment on the uncontested taxes. Thus, RCBC is estopped from questioning the validity of the waivers. To hold otherwise and allow a party to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity which this institution holds dear."*

On the second question, the SC pronounced that RCBC is liable for the deficiency onshore withholding tax. The Court said:

> *"X x x.* ***The liability for payment of the tax rests primarily on the payor as a withholding agent. Thus, in case of his failure to withhold the tax or in case of under withholding, the deficiency tax shall be collected from the payor/withholding agent.*** *The payee is not required to file an income tax return for the particular income. (Emphasis supplied)*
>
> *"X x x.*
>
> *"In Chamber of Real Estate and Builders' Associations, Inc. v. The Executive Secretary, the Court has explained that the purpose of the withholding tax system is three-fold: (1) to provide the taxpayer with a convenient way of paying his tax liability; (2) to ensure the collection of tax, and (3) to improve the government's cashflow. Under the withholding tax system, the payor is the taxpayer upon whom the tax is imposed, while the withholding agent simply acts as an agent or a collector of the government to ensure the collection of taxes.*
>
> *"X x x.*
>
> *In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law.* ***His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income.*** *The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:*
>
> *"****the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code****, compliance with which is imposed on the withholding agent and not upon the taxpayer." (Emphasis supplied)*

Lastly, the SC once again made mention of the truism that as a rule, the findings and conclusions of the CTA is accorded with highest respect and presumed valid. The Court stressed:

"X x x. The CTA, as a specialized court dedicated exclusively to the study and resolution of tax problems, has developed an expertise on the subject of taxation. As such, its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority on the part of the Tax Court." (Underscoring supplied)

Petition of RCBC was denied.

Alluding to the doctrine on estoppel mentioned earlier in this case, the ensuing elucidations may be of further information:

"*Estoppel rests on this rule: 'Whenever a party has, by his declaration, act or omission, intentionally and deliberately led the other to believe a particular thing true, and act, upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it*" (De Castro vs. Ginete, 27 SCRA 623). "*It is based upon grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied upon*" (PNB vs. CA, 94 SCRA 357). [Cited in Sibal, Jose A.R.: Philippine Legal Encyclopedia].

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Website: http://www.senate.gov.ph
Email: attydascil@yahoo.com, taxbits@yahoo.com
Telefax No.: 552-6849 ; Tel. No. : 552-6850

Editors and Contributing Writers

Atty. RODELIO T. DASCIL, MNSA
Director General

Atty. EMMANUEL M. ALONZO
Director III, Legal & Tariff

RECHILDA B. GASCON, MNSA
Director III, Tax Policy & Admin

MARIA LUCRECIA R. MIR, MNSA
Director III, Direct Taxes

VIVIAN A. CABILING
Director III, Indirect Taxes

JULIETA M. FONTIVEROS
Director II, Legal & Tariff

NORBERTO M. VILLANUEVA
Director II, Tax Policy & Admin

ELVIRA P. CRUDO
Director II, Direct Taxes

Atty. SHERRY ANNE C. SALAZAR
Director II, Indirect Taxes

BONIFACIO R. JOSON
LSA-III, ODG - Layout Artist

CLINTON S. MARTINEZ
SLSO II, Indirect Taxes