

EN BANC

[G.R. No. 210588, November 29, 2016]

**SECRETARY OF FINANCE CESAR B. PURISIMA AND
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO--
HENARES, PETITIONERS, V. REPRESENTATIVE CARMELO F.
LAZATIN AND ECOZONE PLASTIC ENTERPRISES CORPORATION,
RESPONDENTS.**

DECISION

BRION, J.:

This is a direct recourse to this Court from the Regional Trial Court (*RTC*), Branch 58, Angeles City, through a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court on a pure question of law. The petition seeks the reversal of the November 8, 2013 decision^[2] of the RTC in SCA Case No. 12-410. In the assailed decision, the RTC declared Revenue Regulation (*RR*) No. 2-2012 unconstitutional and without force and effect.

The Facts

In response to reports of smuggling of petroleum and petroleum products and to ensure the correct taxes are paid and collected, petitioner Secretary of Finance Cesar V. Purisima - pursuant to his authority to interpret tax laws^[3] and upon the recommendation of petitioner Commissioner of Internal Revenue (*CIR*) Kim S. Jacinto-Henares signed RR 2-2012 on February 17, 2012.

The RR requires the payment of value-added tax (*VAT*) and excise tax on the importation of all petroleum and petroleum products coming directly from abroad and brought into the Philippines, including Freeport and economic zones (*FEZs*).^[4] It then allows the credit or refund of any VAT or excise tax paid *if the taxpayer proves* that the petroleum previously brought in has been sold to a duly registered FEZ locator and used pursuant to the registered activity of such locator.^[5]

In other words, an FEZ locator must first pay the required taxes upon entry into the FEZ of a petroleum product, and must thereafter prove the use of the petroleum product for the locator's registered activity in order to secure a credit for the taxes paid.

On March 7, 2012, Carmelo F. Lazatin, in his capacity as Pampanga First District Representative, filed a petition for prohibition and injunction^[6] against the petitioners to annul and set aside RR 2-2012.

Lazatin posits that Republic Act No. (RA) 9400^[7] treats the Clark Special Economic Zone and Clark Freeport Zone (together hereinafter referred to as *Clark FEZ*) as a separate customs territory and allows tax and duty-free importations of raw materials, capital and equipment into the zone. Thus, the imposition of VAT and

excise tax, even on the importation of petroleum products into FEZs (like *Clark FEZ*), directly contravenes the law.

The respondent Ecozone Plastic Enterprises Corporation (*EPEC*) sought to intervene in the proceedings as a co-petitioner and accordingly entered its appearance and moved for leave of court to file its petition-in-intervention.^[8]

EPEC claims that, as a Clark FEZ locator, it stands to suffer when RR 2-2012 is implemented. EPEC insists that RR 2-2012's mechanism of requiring even locators to pay the tax first and to subsequently claim a credit or to refund the taxes paid effectively removes the locators' tax-exempt status.

The RTC initially issued a temporary restraining order to stay the implementation of RR 2-2012. It eventually issued a writ of preliminary injunction in its order dated April 4, 2012.

The petitioners questioned the issuance of the writ. On May 17, 2012, they filed a petition for *certiorari*^[9] before the Court of Appeals (CA) assailing the RTC's order. The CA granted the petition^[10] and denied the respondents' subsequent motion for reconsideration.^[11]

The respondents stood their ground by filing a petition for review on *certiorari* before this Court (G.R. No. 208387) to reinstate the RTC's injunction against the implementation of RR 2-2012, and by moving for the issuance of a temporary restraining order and/or writ of preliminary injunction. We denied the motion but nevertheless required the petitioners to comment on the petition.

The proceedings before the RTC in the meanwhile continued. On April 18, 2012, petitioner Lazatin amended his original petition, converting it to a petition for declaratory relief.^[12] The RTC admitted the amended petition and allowed EPEC to intervene.

In its decision dated November 8, 2013, the RTC ruled in favor of Lazatin and EPEC.

First, on the procedural aspect, the RTC held that the original petition's amendment is allowed by the rules and that amendments are largely preferred; it allowed the amendment in the exercise of its sound judicial discretion to avoid multiplicity of suits and to give the parties an opportunity to thresh out the issues and finally reach a conclusion.^[13]

Second, the RTC held that Lazatin and EPEC had legal standing to question the validity of RR 2-2012. Lazatin's allegation that RR 2-2012 effectively amends and modifies RA 9400 gave him standing as a legislator: the amendment of a tax law is a power that belongs exclusively to Congress. Lazatin's allegation, according to the RTC, sufficiently shows how his rights, privileges, and prerogatives as a member of Congress were impaired by the issuance of RR 2-2012.

The RTC also ruled that the case warrants a relaxation on the rules on legal standing because the issues touched upon are of transcendental importance. The trial court considered the encompassing effect that RR 2-2012 may have in the numerous freeport and economic zones in the Philippines, as well as its potential impact on hundreds of investors operating within the zones.

The RTC then held that even if Lazatin does not have legal standing, EPEC's intervention cured this defect: EPEC, as a locator within the Clark FEZ, would be adversely affected by the implementation of RR 2-2012.

Finally, the RTC declared RR 2-2012 unconstitutional. RR 2-2012 violates RA 9400 because it imposes taxes that, by law, are not due in the first place.^[14] Since RA 9400 clearly grants tax and duty-free incentives to Clark FEZ locators, a revocation of these incentives by an RR directly contravenes the express intent of the Legislature.^[15] In effect, the petitioners encroached upon the prerogative to enact, amend, or repeal laws, which the Constitution exclusively granted to Congress.

The Petition

The petitioners anchor their present petition on two arguments: 1) respondents have *no legal standing*, and 2) RR 2-2012 is *valid and constitutional*.

The petitioners submit that the Lazatin and EPEC do not have legal standing to assail the validity of RR 2-2012.

First, the petitioners claim that Lazatin does not have the requisite legal standing as he failed to exactly show how the implementation of RR 2- 2012 would impair the exercise his official functions. Respondent Lazatin merely generally alleged that his constitutional prerogatives to pass or amend laws were gravely impaired or were about to be impaired by the issuance of RR 2-2012. He did not specify the power that he, as a legislator, would be encroached upon.

While the Clark FEZ is within the district that respondent Lazatin represents, the petitioners emphasize that Lazatin failed to show that he is authorized to file a case on behalf of the locators in the FEZ, the local government unit, or his constituents in general.^[16] To the petitioners, if RR 2- 2012 ever caused injury to the locators or to any of Lazatin's constituents, only these injured parties possess the personality to question the petitioners' actions; respondent Lazatin cannot claim this right on their behalf.^[17]

The petitioners claim, too, that the RTC should not have brushed aside the rules on standing on account of transcendental importance. To them, this case does not involve public funds, only a speculative loss of profits upon the implementation of RR 2-2012; nor is Lazatin a party with more direct and specific interest to raise the issues in his petition.^[18] Citing *Senate v. Ermita*,^[19] the petitioners argue that the rules on standing cannot be relaxed.

Second, petitioners also argue that EPEC does not have legal standing to intervene. That EPEC will ultimately bear the VAT and excise tax as an end-user, is misguided.^[20] The burden of payment of VAT and excise tax may be shifted to the buyer^[21] and this burden, from the point of view of the transferee is no longer a tax but merely a component of the cost of goods purchased. The statutory liability for the tax remains with the seller. Thus, EPEC cannot say that when the burden is passed on to it, RR 2-2012 effectively imposes tax on it as a Clark FEZ locator.

The petitioners point out that RR 2-2012 imposes an "advance tax" only upon importers of petroleum products. If EPEC is indeed a locator, then it enjoys tax and duty exemptions granted by RA 9400 so long as it does not bring the petroleum or petroleum products to the Philippine customs territory.^[22]

The petitioners legally argue that RR 2-2012 is valid and constitutional.

First, petitioner submit that RR 2-2012's issuance and implementation are within their powers to undertake.^[23] RR 2-2012 is an administrative issuance that enjoys the presumption of validity in the manner that statutes enjoy this presumption; thus, it cannot be nullified without clear and convincing evidence to the contrary.^[24]

Second, petitioners contend that while RA 9400 does grant tax and customs duty incentives to Clark FEZ locators, there are conditions before these benefits may be availed of. The locators cannot invoke outright exemption from VAT and excise tax on its importations without first satisfying the conditions set by RA 9400, that is, the importation must not be removed from the FEZ and introduced into the Philippine customs territory.^[25]

These locators enjoy what petitioners call a *qualified tax exemption*. They must first pay the corresponding taxes on its imported petroleum. Then, they must submit the documents required under RR 2-2012. If they have sufficiently shown that the imported products have not been removed from the FEZ, their earlier payment shall be subject to a refund.

The petitioners lastly argue that RR 2-2012 does not withdraw the locators' tax exemption privilege. The regulation simply requires proof that a locator has complied with the conditions for tax exemption. If the locator cannot show that the goods were retained and/or consumed within the FEZ, such failure creates the presumption that the goods have been introduced into the customs territory without the appropriate permits.^[26] On the other hand, if they have duly proven the disposition of the goods within the FEZ, their "advance payment" is subject to a refund. Thus, to the petitioners, to the extent that a refund is allowable, there is in reality a tax exemption.^[27]

Counter-arguments

Respondents Lazatin and EPEC, maintaining that they have standing to question its validity, insist that RR 2-2012 is unconstitutional.

Respondents have standing as lawmaker and FEZ locator.

The respondents argue that a member of Congress has standing to protect the prerogatives, powers, and privileges vested by the Constitution in his office.^[28] As a member of Congress, his standing to question executive issuances that infringe on the right of Congress to enact, amend, or repeal laws has already been recognized.^[29] He suffers substantial injury whenever the executive oversteps and intrudes into his power as a lawmaker.^[30]

On the other hand, the respondents point out that RR 2-2012 explicitly covers FEZs. Thus, being a Clark FEZ locator, EPEC is among the many businesses that would have been directly affected by its implementation.^[31]

RR 2-2012 illegally imposes taxes on Clark FEZs.

The respondents underscore that RA 9400 provides FEZ locators certain incentives, such as tax- and duty-free importations of raw materials and capital equipment. These provisions of the law must be interpreted in a way that will give full effect to law's policy and objective, which is to maximize the benefits derived from the FEZs in promoting economic and social development.^[32]

They admit that the law subjects to taxes and duties the goods that were brought into the FEZ and subsequently introduced to the Philippine customs territory. However, contrary to petitioners' position that locators' tax and duty exemptions are *qualified*, their incentives apply *automatically*.

According to the respondents, petitioners' interpretation of the law contravenes the policy laid down by RA 9400, because it makes the incentives subject to a suspensive condition. They claim that the condition — the removal of the goods from the FEZ and their subsequent introduction to the customs territory — is resolutory; locators enjoy the granted incentives *upon bringing the goods into the FEZ*. It is only *when the goods are shown to have been brought into the customs territory* will the proper taxes and duties have to be paid.^[33] RR 2-2012 reverses this process by requiring the locators to pay "advance" taxes and duties first and to subsequently prove that they are entitled to a refund, thereafter.^[34] RR 2-2012 indeed allows a refund, but a refund of taxes that were not due in the first place.^[35]

The respondents add that even the refund mechanism under RR 2-2012 is problematic. They claim that RR 2-2012 only allows a refund when the petroleum products brought into the FEZ are subsequently *sold* to FEZ locators or to entities that similarly enjoy exemption from direct and indirect taxes. The issuance does not envision a situation where the petroleum products are directly brought into the FEZ and are *consumed* by the same entity/locator.^[36] Further, the refund process takes a considerable length of time to secure, thus requiring cash outlay on the part of locators;^[37] even when the claim for refund is granted, the refund will not be in cash, but in the form of a Tax Credit Certificate (TCC).^[38]

As the challenged regulation directly contravenes incentives legitimately granted by a legislative act, the respondents argue that in issuing RR 2-2012, the petitioners not only encroached upon congressional prerogatives and arrogated powers unto themselves; they also effectively violated, brushed aside, and rendered nugatory the rigorous process required in enacting or amending laws.^[39]

Issues

We shall decide the following issues:

- I. Whether respondents Lazatin and EPEC have legal standing to bring the action of declaratory relief; and
- II. Whether RR 2-2012 is valid and constitutional.

The Court's Ruling

We do not find the petition meritorious.

I. Respondents have legal