

THIRD DIVISION

[G.R. No. 200670, July 06, 2015]

**CLARK INVESTORS AND LOCATORS ASSOCIATION, INC.,
PETITIONER, VS. SECRETARY OF FINANCE AND COMMISSIONER
OF INTERNAL REVENUE, RESPONDENTS.**

DECISION

VILLARAMA, JR., J.:

This is a petition for certiorari with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to annul and set aside Revenue Regulations No. 2-2012 (RR 2-2012) issued by the Department of Finance (DOF) on February 17, 2012 upon recommendation of the Bureau of Internal Revenue (BIR). Petitioner Clark Investors and Locators Association, Inc. claims that RR 2-2012, which imposes Value Added Tax (VAT) and excise tax on the importation of petroleum and petroleum products from abroad into the Freeport or Economic Zones, is void and contrary to Republic Act (RA) No. 7227, otherwise known as the *Bases Conversion and Development Act of 1992*, as amended by RA No. 9400.

The salient facts follow.

On March 13, 1992, Congress enacted RA No. 7227 which mandated the accelerated conversion of the Clark and Subic military reservations into special economic zones. Section 12 thereof provides for the creation of the Subic Special Economic Zone:

SEC. 12. *Subic Special Economic Zone.* — Subject to the concurrence by resolution of the sangguniang panlungsod of the City of Olongapo and the sangguniang bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the Office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the zone as provided herein.

The abovementioned zone shall be subject to the following policies:

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and futures shall be allowed and maintained in the Subic Special Economic Zone;

(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operation of banks and other financial institutions within the Subic Special Economic Zone;

(f) Banking and finance shall be liberalized with the establishment of foreign currency depository units of local commercial banks and offshore banking units of foreign banks with minimum Central Bank regulation;

(g) Any investor within the Subic Special Economic Zone whose continuing investment shall not be less than Two hundred fifty thousand dollars (\$250,000), his/her spouse and dependent children under twenty-

one (21) years of age, shall be granted permanent resident status within the Subic Special Economic Zone. They shall have freedom of ingress and egress to and from the Subic Special Economic Zone without any need of special authorization from the Bureau of Immigration and Deportation. The Subic Bay Metropolitan Authority referred to in Section 13 of this Act may also issue working visas renewable every two (2) years to foreign executives and other aliens possessing highly-technical skills which no Filipino within the Subic Special Economic Zone possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent residence status and working visas by the Subic Bay Metropolitan Authority shall be reported to the Bureau of Immigration and Deportation within thirty (30) days after issuance thereof;

(h) The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own internal security and firefighting forces; and

(i) Except as herein provided, the local government units comprising the Subic Special Economic Zone shall retain their basic autonomy and identity. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991. (Emphasis supplied)

Based on Section 12 (c) above, in lieu of national and local taxes, all businesses and enterprises operating within the Subic Special Economic Zone shall pay a preferential gross income tax rate of five percent (5%). In addition, Section 12 (b) also provides that such businesses and enterprises shall be exempt from the payment of all taxes and duties on the importation of raw materials, capital, and equipment into the Subic Special Economic Zone.

Meanwhile, on March 20, 2007, Congress enacted RA No. 9400 which extended the aforementioned tax and fiscal incentives under RA No. 7227 to the Clark Freeport Zone. By way of amendment, Section 2 thereof provides:

SEC. 2. Section 15 of Republic Act No. 7227, as amended, is hereby amended to read as follows:

"SEC. 15. *Clark Special Economic Zone (CSEZ) and Clark Freeport Zone (CFZ)*. - Subject to the concurrence by resolution of the local government units directly affected, the President is hereby authorized to create by executive proclamation a Special Economic Zone covering the lands occupied by the Clark military reservations and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America, as amended, located within the

territorial jurisdiction of Angeles City, municipalities of Mabalacat and Porac, Province of Pampanga, and the municipalities of Capas and Bamban, Province of Tarlac, in accordance with the provision as herein provided insofar as applied to the Clark military reservations. The Clark Air Base proper with an area of not more than four thousand four hundred hectares (4,400 has.), with the exception of the twenty-two-hectare commercial area situated near the main gate and the Bayanihan Park consisting of seven and a half hectares (7.5 has.) located outside the main gate of the Clark Special Economic Zone, is hereby declared a freeport zone.

"The CFZ shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital equipment within, into and exported out of the CFZ, as well as provide incentives such as tax and duty-free importation of raw materials and capital equipment. However, exportation or removal of goods from the territory of the CFZ to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines.

"The provisions of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed on registered business enterprises within the CFZ. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all registered business enterprises within the CFZ and shall be directly remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the treasurer's office of the municipality or city where they are located.

"The governing body of the Clark Special Economic Zone shall likewise be established by executive proclamation with such powers and functions exercised by the Export Processing Zone Authority pursuant to Presidential Decree No. 66, as amended: *Provided*, That it shall have no regulatory authority over public utilities, which authority pertains to the regulatory agencies created by law for the purpose, such as the Energy Regulatory Commission created under Republic Act No. 9136 and the National Telecommunications Commission created under Republic Act No. 7925.

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"Subject to the concurrence by resolution of the local government units directly affected and upon recommendation of the Philippine Economic Zone Authority (PEZA), the President is hereby authorized to create by executive

proclamation Special Economic Zones covering the City of Balanga and the municipalities of Limay, Mariveles, Morong, Hermosa, and Dinalupihan, Province of Bataan.

"Subject to the concurrence by resolution of the local government units directly affected and upon recommendation of the PEZA, the President is hereby authorized to create by executive proclamation Special Economic Zones covering the municipalities of Castillejos, San Marcelino, and San Antonio, Province of Zambales.

"Duly registered business enterprises that will operate in the Special Economic Zones to be created shall be entitled to the same tax and duty incentives as provided for under Republic Act No. 7916, as amended: *Provided*, That for the purpose of administering these incentives, the PEZA shall register, regulate, and supervise all registered enterprises within the Special Economic Zones."

Thus, the businesses and enterprises within the Clark Freeport Zone are similarly exempt from the payment of all taxes and duties on the importation of raw materials, capital and equipment.

On February 17, 2012, the DOF, upon recommendation of the BIR, issued RR 2-2012 which imposed VAT and excise tax on the importation of petroleum and petroleum products from abroad and into the Freeport or Economic Zones. Section 3 thereof partly provides:

SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS IMPORTED AND ITS SUBSEQUENT EXPORTATION OR SALES TO FREEPORT AND ECONOMIC ZONE LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID; AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS. — The Value-Added and Excise taxes which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

The subsequent exportation or sale/delivery of these petroleum or petroleum products to registered enterprises enjoying tax privileges within the Freeport and Economic zones, as well as the sale of said goods to persons engaged in international shipping or international air transport operations, shall be subject to 0% VAT. With respect to the VAT paid on petroleum or petroleum products by the importer on account of aforesaid 0% VAT transactions/entities and the Excise taxes paid on account of sales to international carriers of Philippine or Foreign Registry for use or consumption outside the Philippines or exempt entities or agencies covered by tax treaties, conventions and international agreements for