769 Phil. 726

FIRST DIVISION

[G.R. No. 180323, September 16, 2015]

PURINA PHILIPPINES, INC.,[1] PETITIONER, VS. HON. WALDO Q. FLORES, IN HIS CAPACITY AS SENIOR DEPUTY EXECUTIVE SECRETARY OF THE OFFICE OF THE PRESIDENT, AND NATIONAL FOOD AUTHORITY, RESPONDENTS.

DECISION

SERENO, C.J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[2] dated 4 July 2007 and Resolution[3] dated 24 October 2007 in CA-G.R. SP No. 91619.

The CA upheld the decision of the Office of the President (OP) affirming the finding of the National Food Authority (NFA) that petitioner is engaged in the corn industry. The CA Resolution denied petitioner's motion for reconsideration.

Facts

Petitioner is a domestic corporation with 100% foreign equity and registered with the Securities and Exchange Commission.[4] It was granted a certificate of authority in 1990 by the Board of Investments to engage in the manufacture of animal feeds in the country.[5]

One of the components used by petitioner in the manufacture of animal feeds is corn, which is bought from local suppliers or imported from other countries with authority from the NFA when local supply is unavailable.[6] The corn is stored in a warehouse in Dampol St., Pulilan, Bulacan.[7]

In 1995, the NFA required petitioner to acquire a warehouse license to store corn.[8] Petitioner filed the necessary application, which was denied by the NFA in a letter dated 30 October 1996.[9] The letter alluded to petitioner's 100% foreign equity, which gave rise to legal impediments hindering the issuance of the license.

In its reply,[10] petitioner sought a clarification of the license requirement. It also requested the issuance of a provisional authority to continue its "corn-related business activities, including the purchase and storage of corn in its warehouses"[11] pending the resolution of the legal issue.

In the letter dated 8 January 1997,[12] the NFA stated that petitioner, as a domestic enterprise, was restricted by List A of the Second Regular Foreign Investment Negative List of the Foreign Investment Act.[13] The law limits to 40% the foreign

equity participation of those engaged in the rice and corn industry pursuant to Presidential Decree No. (P.D.) 194.[14] The NFA therefore granted the request of petitioner for a provisional authority to continue the latter's business, but on one condition. Petitioner was to submit within 20 days a divestment plan of its foreign equity participation in order to comply with the 40% foreign equity limitation as provided by law.

Petitioner requested a reconsideration of the NFA finding.[15] In a letter dated 31 October 1997,[16] the NFA reminded petitioner about the submission of the divestment plan. Attached to the letter was Opinion No. 234[17] dated 10 October 1997 issued by the Office of the Government Corporate Counsel, which found that petitioner was indeed engaged in the corn industry.

Petitioner filed an appeal before the Secretary of Agriculture.[18] In the mean time, it requested and was again granted a provisional authority to continue to purchase and store corn in pursuance of its business.[19] Considering the transfer of administrative jurisdiction over the NFA from the Department of Agriculture to the OP,[20] the OP took cognizance of petitioner's appeal.[21]

Ruling of the Office of the President

In a Decision[22] dated 13 July 2005, the OP dismissed the appeal for lack of merit.

According to the OP, in view of the admissions of petitioner that it buys or imports corn and stores them in a company warehouse, petitioner is engaged in the corn industry as defined under Section 1 of Republic Act No. (R.A.) 3018, the Rice and Com Industry Act.[23] Furthermore, petitioner uses conras raw material for its manufacture of animal feeds. Under Section 2(a) of P.D. 194,[24] the activity of purchasing rice and corn for use as raw material in the manufacture or processing of finished products falls under the term "rice and/or com industry." The OP ruled that based on the law, as long as a company uses corn as raw material or processes it as a supplementary activity, that company shall be deemed engaged in the corn industry.[25]

The OP found no error on the part of the NFA when it required petitioner to submit a divestment plan of the majority of its foreign equity in favor of Filipino citizens.[26]

Petitioner filed a Motion for Reconsideration,[27] which was denied by the OP in the Order dated 16 September 2005.[28] Accordingly, petitioner filed an appeal before the CA.[29]

RULING OF THE CA

The CA issued the assailed Decision[30] dated 4 July 2007 denying the appeal.

The CA ruled that there was no ambiguity in the language of Section 2(a) of P.D. 194 with regard to the definition of the term "rice and/or corn industry."[31] Since petitioner uses corn as raw material in its processing and manufacture of animal

feeds, it is a corporation engaged in the corn industry.

Petitioner's Motion for Reconsideration was likewise denied by the CA in the challenged Resolution dated 24 October 2007.[32] Hence, the instant petition.

ISSUE

Whether petitioner is engaged in the corn industry.

OUR RULING

We answer in the affirmative.

In 1960, Congress nationalized the rice and corn industry through the enactment of R.A. 3018 on 2 August I960.[33] R.A. 3018 prohibits any person who is not a citizen of the Philippines, or any association, partnership or corporation whose capital or capital stock is not wholly owned by citizens of the Philippines, from engaging directly or indirectly in the rice and corn industry.[34] It defines the term "rice and/or corn industry" as follows:

> x x x [T]he term "rice and/or corn industry" shall mean and include the **culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail**, the provisions of Republic Act Numbered Eleven hundred and eighty to [the] contrary notwithstanding, **or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof**: *Provided*, That public utilities duly licensed and registered in accordance with law may transport corn or rice.[35] (Emphases supplied)

R.A. 3018 also created the Rice and Corn Board, which was tasked to study and recommend measures for the improvement and development of the rice and corn industry. On 21 November 1960, the Rice and Corn Board issued Resolution No. 10 pursuant to its mandate to issue rules and regulations implementing R.A. 3018.[36] Resolution No. 10 defined the term "by-product" as "the secondary products resulting from the process of husking, grinding, milling, and cleaning of palay and corn, such as, but not limited to *binlid, darak tahop, tiktik*, corn husk, corn drips and corn meals."[37]

On 26 September 1972, P.D. 4 was issued creating the National Grains Industry Development Administration (Administration). The Administration took over the functions of the Rice and Corn Board in carrying out the purpose of R.A. 3018.[38] The Administration was later reconstituted into the National Grains Authority.[39]

Thirteen years into the effectivity of R.A. 3018, the law succeeded in transferring the country's rice and corn industry to Filipinos and Filipino-owned enterprises.[40] The government then felt the need for the infusion of foreign investments, which may be done by allowing foreign entities to participate in the rice and corn industry through the use of the grains as raw materials in the manufacture or processing of their finished products.[41] P.D. 194 was thus issued on 17 May 1973. It allows

aliens and associations, partnerships or corporations owned in whole or in part by foreigners to engage in the rice and corn industry. It defines the "rice and/or corn industry" as follows:

> SECTION 2. As used in this Decree, the term "rice and/or corn industry" shall include the following activities:
>
> a. **Acquiring by barter, purchase or otherwise, rice and corn and/or the by-products thereof, to the extent of their raw material requirements when these are used as raw materials in the manufacture or processing of their finished products.**
>
> b. Engaging in the culture, production, milling, processing and trading, except retailing, of rice and corn; *Provided*, That the designation of the area in the culture and production, as well as the trading of the produce in the domestic or foreign markets, shall be under the direction and control of the National Grains Authority. (Emphasis supplied)

Whereas foreign equity participation in the rice and corn industry is absolutely prohibited under R.A. 3018, P.D. 194 allows it in associations, partnerships or corporations to the extent of 40%. Section 5 of P.D. 194 provides:

> SECTION 5. In connection with the foreign equity participation, at least 60% thereof shall be transferred to Filipino citizens over a period to be established by the National Grains Authority at the time of approval of its authority to engage in the industry, or phase out its operation within the same period.

Associations, partnerships or corporations owned in whole or in part by foreigners are allowed to engage in the rice and corn industry, but are required to transfer at least 60% of their foreign equity participation to Filipino citizens over a period to be established by the National Grains Authority. Otherwise, the foreign entity's business shall phase out within the same period.

The powers and functions of the National Grains Authority were later expanded, and the agency was reconstituted into the present NFA.[42] In Resolution No. 193-98 dated 27 May 1998, the NFA approved a 30-year period for the divestment of 60% of foreign investors' equity participation in the rice and corn business. Under the *Guidelines in the Divestment of Foreign Equity as Required by P.D. 194*,[43] associations, partnerships or corporations owned in whole or in part by foreigners shall obligate themselves to attain the status of a Philippine national by limiting the foreign ownership of the enterprise to a maximum of 40% of its equity capital at the end of 30 years from actual operation of the business.

In support of its position that it is not engaged in the corn industry, petitioner puts forward the argument that its purchase, storage and use of corn is not *for the purpose of trade* as provided under the definition of the term "rice and/or corn industry" under R.A. 3018.[44] Petitioner argues that its acquisition of corn is solely for the purpose of the processing and manufacture of animal feeds, a product that consists of corn and other ingredients.[45]

The argument fails to convince.

R.A. 3018 defines the rice and/or corn industry as "culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail, x xx or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof." A plain reading of the definition shows that the term "for the purpose of trade" qualifies only the term "acquisition" in order to distinguish it from other motives for acquiring rice or corn, *e.g.*, for personal consumption. There is no need to qualify "culture, milling, warehousing, transporting, exportation, importation [and] handling the distribution, either in wholesale or retail," as these terms already connote commerce. Even if we were to grant that petitioner's acquisition of corn is not for the purpose of trade, it is clear that it engages in the corn industry through the importation and warehousing of corn.

Vigorously resisting the application of P.D. 194 as well, petitioner invokes the Court's ruling in *Chua U v. Lim*:[46]

> xxx [T]he avowed purpose of Republic Act No. 3018, as shown in the explanatory note to the original bill, was to do away with the possibility and practice of aliens creating artificial shortages of rice and corn by hoarding these commodities or cornering the market therefor, so as to enable them to dictate prices thereof. It thus becomes a necessary point of inquiry whether or not the producers of derivatives, in which rice or corn is the main ingredient, could singly, or in combination with others, create an artificial scarcity of the cereals at any given time; and for that purpose, complete data of the consumption capacity of these producers are material.[47] x x x.

According to petitioner, in order for an enterprise to be regarded as one engaged in the rice and corn industry under R.A. 3018, it must be shown (1) that rice or corn is the principal ingredient of its product; and (2) that it has the ability — singly or in combination with others — to create an artificial scarcity of the grain at any time.[48] Considering that P.D. 194 must "be read in furtherance of the general design"[49] of R.A. 3018, petitioner concludes that P.D. 194 should also apply only when the two requisites concur. In this case, it is argued that corn is not the principal ingredient of the animal feeds that petitioner manufactures.[50]

We cannot appreciate the position that P.D. 194 should be interpreted according to the legislative intent of R.A. 3018.

P.D. 194 authorizes aliens, as well as associations, corporations or partnerships owned in whole or in part by foreigners to engage in the rice and corn industry. The decree is a departure from R.A. 3018, which commands that the right to engage in the rice and corn industry be limited to citizens of the Philippines and associations, corporations or partnerships whose capital or capital stock is wholly owned by citizens of the Philippines. Whereas R.A. 3018 effectively eschews foreign participation in the rice and corn industry in any degree, P.D. 194 endeavors to attract foreign investments that would help develop lands for cultivating rice and corn in the country.[51] While P.D. 194 authorizes the issuance of licenses to aliens and business organizations to allow them to engage in the rice and corn industry,