

EN BANC

[G.R. No. 168584, October 15, 2007]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE HONORABLE SECRETARY OF FINANCE, THE HONORABLE COMMISSIONER OF BUREAU OF INTERNAL REVENUE, THE HONORABLE COMMISSIONER OF CUSTOMS, AND THE COLLECTOR OF CUSTOMS OF THE PORT OF SUBIC, PETITIONERS, VS. HON. RAMON S. CAGUIOA, PRESIDING JUDGE, BRANCH 74, RTC, THIRD JUDICIAL REGION, OLONGAPO CITY, INDIGO DISTRIBUTION CORP., HEREIN REPRESENTED BY ARIEL G. CONSOLACION, W STAR TRADING AND WAREHOUSING CORP., HEREIN REPRESENTED BY HIERYN R. ECLARINAL, FREEDOM BRANDS PHILS., CORP., HEREIN REPRESENTED BY ANA LISA RAMAT, BRANDED WAREHOUSE, INC., HEREIN REPRESENTED BY MARY AILEEN S. GOZUN, ALTASIA INC., HEREIN REPRESENTED BY ALAN HARROW, TAINAN TRADE (TAIWAN), INC., HEREIN REPRESENTED BY ELENA RANULLO, SUBIC PARK N' SHOP, HEREIN REPRESENTED BY NORMA MANGALINO DIZON, TRADING GATEWAYS INTERNATIONAL PHILS., HEREIN REPRESENTED BY MA. CHARINA FE C. RODOLFO, DUTY FREE SUPERSTORE (DFS), HEREIN REPRESENTED BY RAJESH R. SADHWANI, CHJIMES TRADING INC., HEREIN REPRESENTED BY ANGELO MARK M. PICARDAL, PREMIER FREEPORT, INC., HEREIN REPRESENTED BY ROMMEL P. GABALDON, FUTURE TRADE SUBIC FREEPORT, INC., HEREIN REPRESENTED BY WILLIE S. VERIDIANO, GRAND COMTRADE INTERNATIONAL CORP., HEREIN REPRESENTED BY JULIUS MOLINDA, AND FIRST PLATINUM INTERNATIONAL, INC., HEREIN REPRESENTED BY ISIDRO M. MUÑOZ, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Petitioners seek via petition for certiorari and prohibition to annul (1) the May 4, 2005 Order^[1] issued by public respondent Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City, granting private respondents' application for the issuance of a writ of preliminary injunction and (2) the Writ of Preliminary Injunction^[2] that was issued pursuant to such Order, which stayed the implementation of Republic Act (R.A.) No. 9334, AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

Petitioners likewise seek to enjoin, restrain and inhibit public respondent from enforcing the impugned issuances and from further proceeding with the trial of Civil

The relevant facts are as follows:

In 1992, Congress enacted Republic Act (R.A) No. 7227^[3] or the Bases Conversion and Development Act of 1992 which, among other things, created the Subic Special Economic and Freeport Zone (SBF^[4]) and the Subic Bay Metropolitan Authority (SBMA).

R.A. No. 7227 envisioned the SBF to 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."

^[5] In line with this vision, Section 12 of the law provided:

(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 provisions 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 be 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 future shall be allowed and maintained in the Subic Special Economic Zone;

(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operations 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 renewal 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;

x x x x. (Emphasis supplied)

Pursuant to the law, private respondents Indigo Distribution Corporation, W Star Trading and Warehousing Corporation, Freedom Brands Philippines Corporation, Branded Warehouse, Inc., Altasia, Inc., Tainan Trade (Taiwan) Inc., Subic Park `N Shop, Incorporated, Trading Gateways International Philippines, Inc., Duty Free Superstore (DFS) Inc., Chijmes Trading, Inc., Premier Freeport, Inc., Future Trade Subic Freeport, Inc., Grand Comtrade Int'l., Corp., and First Platinum International, Inc., which are all domestic corporations doing business at the SBF, applied for and were granted Certificates of Registration and Tax Exemption^[6] by the SBMA.

These certificates allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, including alcohol and tobacco products, and uniformly granted them tax exemptions for such importations as contained in the following provision of their respective Certificates:

ARTICLE IV. The Company shall be entitled to tax and duty-free importation of raw materials, capital equipment, and household and personal items for use solely within the Subic Bay Freeport Zone pursuant to Sections 12(b) and 12(c) of the Act and Sections 43, 45, 46 and 49 of the Implementing Rules. All importations by the Company are exempt from inspection by the *Societe Generale de Surveillance* if such importations are delivered immediately to and for use solely within the Subic Bay Freeport Zone. (Emphasis supplied)

Congress subsequently passed R.A. No. 9334, however, effective on January 1, 2005,^[7] Section 6 of which provides:

Sec. 6. Section 131 of the National Internal Revenue Code of 1977, as amended, is hereby amended to read as follows:

Sec. 131. Payment of Excise Taxes on Imported Articles. -

(A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Economic Freeport Zone, created under Republic Act No. 7227; x x x and such other freeports as may hereafter be established or created by law: Provided, further, That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty Free Philippines (DFP), shall be exempted from all applicable duties only: x x x Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one Freeport to another Freeport, shall not be deemed an introduction into the Philippine customs territory. x x x. (Emphasis and underscoring supplied)

On the basis of Section 6 of R.A. No. 9334, SBMA issued on January 10, 2005 a Memorandum^[8] declaring that effective January 1, 2005, all importations of cigars, cigarettes, distilled spirits, fermented liquors and wines into the SBF, including those intended to be transshipped to other free ports in the Philippines, shall be treated as ordinary importations subject to all applicable taxes, duties and charges, including excise taxes.

Meanwhile, on February 3, 2005, former Bureau of Internal Revenue (BIR) Commissioner Guillermo L. Parayno, Jr. requested then Customs Commissioner George M. Jereos to immediately collect the excise tax due on imported alcohol and tobacco products brought to the Duty Free Philippines (DFP) and Freeport zones.^[9]

Accordingly, the Collector of Customs of the port of Subic directed the SBMA Administrator to require payment of all appropriate duties and taxes on all importations of cigars and cigarettes, distilled spirits, fermented liquors and wines; and for all transactions involving the said items to be covered from then on by a

consumption entry and no longer by a warehousing entry.^[10]

On February 7, 2005, SBMA issued a Memorandum^[11] directing the departments concerned to require locators/importers in the SBF to pay the corresponding duties and taxes on their importations of cigars, cigarettes, liquors and wines before said items are cleared and released from the freeport. However, certain SBF locators which were "exclusively engaged in the transshipment of cigarette products for foreign destinations" were allowed by the SBMA to process their import documents subject to their submission of an Undertaking with the Bureau of Customs.^[12]

On February 15, 2005, private respondents wrote the offices of respondent Collector of Customs and the SBMA Administrator requesting for a reconsideration of the directives on the imposition of duties and taxes, particularly excise taxes, on their shipments of cigars, cigarettes, wines and liquors.^[13] Despite these letters, however, they were not allowed to file any warehousing entry for their shipments.

Thus, private respondent enterprises, through their representatives, brought before the RTC of Olongapo City a special civil action for declaratory relief^[14] to have certain provisions of R.A. No. 9334 declared as unconstitutional, which case was docketed as Civil Case No. 102-0-05.

In the main, private respondents submitted that (1) R.A. No. 9334 should not be interpreted as altering, modifying or amending the provisions of R.A. No. 7227 because repeals by implication are not favored; (2) a general law like R.A. No. 9334 cannot amend R.A. No. 7227, which is a special law; and (3) the assailed law violates the one bill-one subject rule embodied in Section 26(1), Article VI^[15] of the Constitution as well as the constitutional proscription against the impairment of the obligation of contracts.^[16]

Alleging that great and irreparable loss and injury would befall them as a consequence of the imposition of taxes on alcohol and tobacco products brought into the SBF, private respondents prayed for the issuance of a writ of preliminary injunction and/or Temporary Restraining Order (TRO) and preliminary mandatory injunction to enjoin the directives of herein petitioners.

Petitioners duly opposed the private respondents' prayer for the issuance of a writ of preliminary injunction and/or TRO, arguing that (1) tax exemptions are not presumed and even when granted, are strictly construed against the grantee; (2) an increase in business expense is not the injury contemplated by law, it being a case of *damnum absque injuria*; and (3) the drawback mechanism established in the law clearly negates the possibility of the feared injury.^[17]

Petitioners moreover pointed out that courts are enjoined from issuing a writ of injunction and/or TRO on the grounds of an alleged nullity of a law, ordinance or administrative regulation or circular or in a manner that would effectively dispose of the main case. Taxes, they stressed, are the lifeblood of the government and their prompt and certain availability is an imperious need. They maintained that greater injury would be inflicted on the public should the writ be granted.

On May 4, 2005, the court *a quo* granted private respondents' application for the