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[G.R. NO. 158540, August 03, 2005]

SOUTHERN CROSS CEMENT CORPORATION, PETITIONER, VS. CEMENT MANUFACTURERS ASSOCIATION OF THE PHILIPPINES, THE SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY, THE SECRETARY OF THE DEPARTMENT OF FINANCE AND THE COMMISSIONER OF THE BUREAU OF CUSTOMS, RESPONDENTS.

R E S O L U T I O N

TINGA, J.:

Cement is hardly an exciting subject for litigation. Still, the parties in this case have done their best to put up a spirited advocacy of their respective positions, throwing in everything including the proverbial kitchen sink. At present, the burden of passion, if not proof, has shifted to public respondents Department of Trade and Industry (DTI) and private respondent Philippine Cement Manufacturers Corporation (Philcemcor),[1] who now seek reconsideration of our *Decision* dated 8 July 2004 *(Decision)*, which granted the petition of petitioner Southern Cross Cement Corporation (Southern Cross).

This case, of course, is ultimately not just about cement. For respondents, it is about love of country and the future of the domestic industry in the face of foreign competition. For this Court, it is about elementary statutory construction, constitutional limitations on the executive power to impose tariffs and similar measures, and obedience to the law. Just as much was asserted in the *Decision*, and the same holds true with this present *Resolution*.

An extensive narration of facts can be found in the *Decision*.[2] As can well be recalled, the case centers on the interpretation of provisions of Republic Act No. 8800, the Safeguard Measures Act ("SMA"), which was one of the laws enacted by Congress soon after the Philippines ratified the General Agreement on Tariff and Trade (GATT) and the World Trade Organization (WTO) Agreement.[3] The SMA provides the structure and mechanics for the imposition of emergency measures, including tariffs, to protect domestic industries and producers from increased imports which inflict or could inflict serious injury on them.[4]

A brief summary as to how the present petition came to be filed by Southern Cross. Philcemcor, an association of at least eighteen (18) domestic cement manufacturers filed with the DTI a petition seeking the imposition of safeguard measures on gray Portland cement,[5] in accordance with the SMA. After the DTI issued a provisional safeguard measure,[6] the application was referred to the Tariff Commission for a formal investigation pursuant to Section 9 of the SMA and its Implementing Rules and Regulations, in order to determine whether or not to impose a definitive

safeguard measure on imports of gray Portland cement. The Tariff Commission held public hearings and conducted its own investigation, then on 13 March 2002, issued its Formal Investigation Report ("Report"). The Report determined as follows:

> The elements of serious injury and imminent threat of serious injury not having been established, it is hereby recommended that no definitive general safeguard measure be imposed on the importation of gray Portland cement.[7]

The DTI sought the opinion of the Secretary of Justice whether it could still impose a definitive safeguard measure notwithstanding the negative finding of the Tariff Commission. After the Secretary of Justice opined that the DTI could not do so under the SMA,[8] the DTI Secretary then promulgated a *Decision*[9] wherein he expressed the DTI's disagreement with the conclusions of the Tariff Commission, but at the same time, ultimately denying Philcemcor's application for safeguard measures on the ground that the he was bound to do so in light of the Tariff Commission's negative findings.[10]

Philcemcor challenged this *Decision* of the DTI Secretary by filing with the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus*[11] seeking to set aside the DTI Decision, as well as the Tariff Commission's Report. It prayed that the Court of Appeals direct the DTI Secretary to disregard the Report and to render judgment independently of the Report. Philcemcor argued that the DTI Secretary, vested as he is under the law with the power of review, is not bound to adopt the recommendations of the Tariff Commission; and, that the Report is void, as it is predicated on a flawed framework, inconsistent inferences and erroneous methodology.[12]

The Court of Appeals Twelfth Division, in a *Decision*[13] penned by Court of Appeals Associate Justice Elvi John Asuncion,[14] partially granted Philcemcor's petition. The appellate court ruled that it had jurisdiction over the petition for certiorari since it alleged grave abuse of discretion. While it refused to annul the findings of the Tariff Commission,[15] it also held that the DTI Secretary was not bound by the factual findings of the Tariff Commission since such findings are merely recommendatory and they fall within the ambit of the Secretary's discretionary review. It determined that the legislative intent is to grant the DTI Secretary the power to make a final decision on the Tariff Commission's recommendation.[16]

On 23 June 2003, Southern Cross filed the present petition, arguing that the Court of Appeals has no jurisdiction over Philcemcor's petition, as the proper remedy is a petition for review with the CTA conformably with the SMA, and; that the factual findings of the Tariff Commission on the existence or non-existence of conditions warranting the imposition of general safeguard measures are binding upon the DTI Secretary.

Despite the fact that the Court of Appeals' *Decision* had not yet become final, its binding force was cited by the DTI Secretary when he issued a new *Decision* on 25 June 2003, wherein he ruled that that in light of the appellate court's *Decision*, there was no longer any legal impediment to his deciding Philcemcor's application for definitive safeguard measures.[17] He made a determination that, contrary to the

findings of the Tariff Commission, the local cement industry had suffered serious injury as a result of the import surges.[18] Accordingly, he imposed a definitive safeguard measure on the importation of gray Portland cement, in the form of a definitive safeguard duty in the amount of P20.60/40 kg. bag for three years on imported gray Portland Cement.[19]

On 7 July 2003, Southern Cross filed with the Court a *"Very Urgent Application for a Temporary Restraining Order and/or A Writ of Preliminary Injunction"* ("TRO Application"), seeking to enjoin the DTI Secretary from enforcing his Decision of 25 June 2003 in view of the pending petition before this Court. Philcemcor filed an opposition, claiming, among others, that it is not this Court but the CTA that has jurisdiction over the application under the law.

On 1 August 2003, Southern Cross filed with the CTA a *Petition for Review*, assailing the DTI Secretary's 25 June 2003 Decision which imposed the definite safeguard measure. Yet Southern Cross did not promptly inform this Court about this filing. The first time the Court would learn about this Petition with the CTA was when Southern Cross mentioned such fact in a pleading dated 11 August 2003 and filed the next day with this Court.[20]

Philcemcor argued before this Court that Southern Cross had deliberately and willfully resorted to forum-shopping; that the CTA, being a special court of limited jurisdiction, could only review the ruling of the DTI Secretary when a safeguard measure is imposed; and that the factual findings of the Tariff Commission are not binding on the DTI Secretary.[21]

After giving due course to Southern Cross's Petition, the Court called the case for oral argument on 18 February 2004.[22] At the oral argument, attended by the counsel for Philcemcor and Southern Cross and the Office of the Solicitor General, the Court simplified the issues in this wise: (i) whether the *Decision* of the DTI Secretary is appealable to the CTA or the Court of Appeals; (ii) assuming that the Court of Appeals has jurisdiction, whether its *Decision* is in accordance with law; and, whether a *Temporary Restraining Order* is warranted.[23]

After the parties had filed their respective memoranda, the Court's Second Division, to which the case had been assigned, promulgated its *Decision* granting Southern Cross's *Petition*.[24]The *Decision* was unanimous, without any separate or concurring opinion.

The Court ruled that the Court of Appeals had no jurisdiction over Philcemcor's *Petition*, the proper remedy under Section 29 of the SMA being a petition for review with the CTA; and that the Court of Appeals erred in ruling that the DTI Secretary was not bound by the negative determination of the Tariff Commission and could therefore impose the general safeguard measures, since Section 5 of the SMA precisely required that the Tariff Commission make a positive final determination before the DTI Secretary could impose these measures. Anent the argument that Southern Cross had committed forum-shopping, the Court concluded that there was no evident malicious intent to subvert procedural rules so as to match the standard under Section 5, Rule 7 of the Rules of Court of willful and deliberate forum shopping. Accordingly, the *Decision* of the Court of Appeals dated 5 June 2003 was

declared null and void.

The Court likewise found it necessary to nullify the *Decision* of the DTI Secretary dated 25 June 2003, rendered after the filing of this present *Petition*. This *Decision* by the DTI Secretary had cited the obligatory force of the null and void Court of Appeals' *Decision*, notwithstanding the fact that the decision of the appellate court was not yet final and executory. Considering that the decision of the Court of Appeals was a nullity to begin with, the inescapable conclusion was that the new decision of the DTI Secretary, prescinding as it did from the imprimatur of the decision of the Court of Appeals, was a nullity as well.

After the *Decision* was reported in the media, there was a flurry of newspaper articles citing alleged negative reactions to the ruling by the counsel for Philcemcor, the DTI Secretary, and others.[25] Both respondents promptly filed their respective motions for reconsideration.

On 21 September 2004, the Court *En Banc* resolved, upon motion of respondents, to accept the petition and resolve the *Motions for Reconsideration*.[26] The case was then reheard[27] on oral argument on 1 March 2005. During the hearing, the Court elicited from the parties their arguments on the two central issues as discussed in the assailed *Decision*, pertaining to the jurisdictional aspect and to the substantive aspect of whether the DTI Secretary may impose a general safeguard measure despite a negative determination by the Tariff Commission. The Court chose not to hear argumentation on the peripheral issue of forum-shopping,[28] although this question shall be tackled herein shortly. Another point of concern emerged during oral arguments on the exercise of quasi-judicial powers by the Tariff Commission, and the parties were required by the Court to discuss in their respective memoranda whether the Tariff Commission could validly exercise quasi-judicial powers in the exercise of its mandate under the SMA.

The Court has likewise been notified that subsequent to the rendition of the Court's *Decision*, Philcemcor filed a *Petition for Extension of the Safeguard Measure* with the DTI, which has been referred to the Tariff Commission.[29] In an *Urgent Motion* dated 21 December 2004, Southern Cross prayed that Philcemcor, the DTI, the Bureau of Customs, and the Tariff Commission be directed to "cease and desist from taking any and all actions pursuant to or under the null and void CA Decision and DTI Decision, including proceedings to extend the safeguard measure.[30] In a *Manifestation and Motion* dated 23 June 2004, the Tariff Commission informed the Court that since no prohibitory injunction or order of such nature had been issued by any court against the Tariff Commission, the Commission proceeded to complete its investigation on the petition for extension, pursuant to Section 9 of the SMA, but opted to defer transmittal of its report to the DTI Secretary pending "guidance" from this Court on the propriety of such a step considering this pending *Motion for Reconsideration*. In a *Resolution* dated 5 July 2005, the Court directed the parties to maintain the status quo effective of even date, and until further orders from this Court. The denial of the pending motions for reconsideration will obviously render the pending petition for extension academic.

I. Jurisdiction of the Court of Tax Appeals
Under Section 29 of the SMA

The first core issue resolved in the assailed *Decision* was whether the Court of Appeals had jurisdiction over the special civil action for certiorari filed by Philcemcor assailing the 5 April 2002 *Decision* of the DTI Secretary. The general jurisdiction of the Court of Appeals over special civil actions for certiorari is beyond doubt. The Constitution itself assures that judicial review avails to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. At the same time, the special civil action of certiorari is available only when there is no plain, speedy and adequate remedy in the ordinary course of law.[31] Philcemcor's recourse of special civil action before the Court of Appeals to challenge the *Decision* of the DTI Secretary not to impose the general safeguard measures is not based on the SMA, but on the general rule on certiorari. Thus, the Court proceeded to inquire whether indeed there was no other plain, speedy and adequate remedy in the ordinary course of law that would warrant the allowance of Philcemcor's special civil action.

The answer hinged on the proper interpretation of Section 29 of the SMA, which reads:

> Section 29. *Judicial Review*. - Any interested party who is adversely affected by the **ruling of the Secretary in connection with the imposition of a safeguard measure** may file with the CTA, a petition for review of such ruling within thirty (30) days from receipt thereof. Provided, *however*, that the filing of such petition for review shall not in any way stop, suspend or otherwise toll the imposition or collection of the appropriate tariff duties or the adoption of other appropriate safeguard measures, as the case may be.
>
> The petition for review shall comply with the same requirements and shall follow the same rules of procedure and shall be subject to the same disposition as in appeals in connection with adverse rulings on tax matters to the Court of Appeals.[32] (Emphasis supplied)

The matter is crucial for if the CTA properly had jurisdiction over the petition challenging the DTI Secretary's ruling not to impose a safeguard measure, then the special civil action of certiorari resorted to instead by Philcemcor would not avail, owing to the existence of a plain, speedy and adequate remedy in the ordinary course of law.[33] The Court of Appeals, in asserting that it had jurisdiction, merely cited the general rule on certiorari jurisdiction without bothering to refer to, or possibly even study, the import of Section 29. In contrast, this Court duly considered the meaning and ramifications of Section 29, concluding that it provided for a plain, speedy and adequate remedy that Philcemcor could have resorted to instead of filing the special civil action before the Court of Appeals.

Philcemcor still holds on to its hypothesis that the petition for review allowed under Section 29 lies only if the DTI Secretary's ruling imposes a safeguard measure. If, on the other hand, the DTI Secretary's ruling is not to impose a safeguard measure, judicial review under Section 29 could not be resorted to since the provision refers to rulings "in connection with **the imposition**" of the safeguard measure, as opposed to the non-imposition. Since the *Decision* dated 5 April 2002 resolved against imposing a safeguard measure, Philcemcor claims that the proper remedial