

## FIRST DIVISION

[ G.R. No. 119252, August 18, 1997 ]

**COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS, PETITIONERS, VS. HON. APOLINARIO B. SANTOS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 67, PASIG CITY; ANTONIO M. MARCO; JEWELRY BY MARCO & CO., INC., AND GUILD OF PHILIPPINE JEWELLERS, INC., RESPONDENTS.**

### DECISION

#### **HERMOSISIMA, JR., J.:**

Of grave concern to this Court is the judicial pronouncement of the court a quo that certain provisions of the Tariff & Customs Code and the National Internal Revenue Code are unconstitutional. This provokes the issue: Can the Regional Trial Courts declare a law inoperative and without force and effect or otherwise unconstitutional? If it can, under what circumstances?

In this petition, the Commissioner of Internal Revenue and the Commissioner of Customs jointly seek the reversal of the Decision,<sup>[1]</sup> dated February 16, 1995, of herein public respondent, Hon. Apolinario B. Santos, Presiding Judge of Branch 67 of the Regional Trial Court of Pasig City.

The following facts, concisely related in the petition<sup>[2]</sup> of the Office of the Solicitor General, appear to be undisputed:

"1. Private respondent Guild of Philippine Jewelers, Inc., is an association of Filipino jewelers engaged in the manufacture of jewelers (sic) and allied undertakings. Among its members are Hans Brumann, Inc., Miladay Jewels Inc., Mercelles, Inc., Solid Gold International Traders inc., Diagem Trading Corporation, and Private respondent Jewelry by Marco & Co., Inc. Private respondent Antonio M. Marco is the President of the Guild.

2. On August 5, 1988, Felicidad L. Viray, then Regional Director, Region No. 4-A of the Bureau of Internal Revenue, acting for and in behalf of the Commissioner of Internal Revenue, issued Regional Mission Order No. 109-88 to BIR officers, led by Eliseo Corcega, to conduct surveillance, monitoring, and inventory of all imported articles of Hans Brumann, Inc., and place the same under preventive embargo. The duration of the mission was from August 8 to August 20, 1988 (Exhibit '1'; Exhibit 'A').

3. On August 17, 1988, pursuant to the aforementioned Mission Order, the BIR officers proceeded to the establishment of Hans Brumann, Inc., served the Mission Order, and informed the establishment that they were

going to make an inventory of the articles involved to see if the proper taxes thereon have been paid. They then made an inventory of the articles displayed in the cabinets with the assistance of an employee of the establishment. They listed down the articles, which list was signed by the assistant employee. They also requested the presentation of proof of necessary payments for excise tax and value-added tax on said articles (pp, 10-15, TSN April 12, 1993, Exhibits '2', '2-A', '3', '3-a').

4. The BIR officers requested the establishment not to sell the articles until it can be proven that the necessary taxes thereon have been paid. Accordingly, Mr. Hans Brumann, the owner of the establishment, signed a receipt for Goods, Articles, and Things Seized under Authority of the National Internal Revenue Code (dated August 17, 1988), acknowledging that the articles inventoried have been seized and left in his possession, and promising not to dispose of the same without authority of the Commissioner of Internal Revenue pending investigation.<sup>[3]</sup>

5. Subsequently, BIR officer Eliseo Corcega submitted to his superiors a report of the inventory conducted and a computation of the value-added tax and ad valorem tax on the articles for evaluation and disposition.<sup>[4]</sup>

6. Mr. Hans Brumann, the owner of the establishment, never filed a protest with the BIR on the preventive embargo of the articles.<sup>[5]</sup>

7. On October 17, 1988, Letter of Authority No. 0020596 was issued by Deputy Commissioner Eufrazio D. Santos to BIR officers to examine the books of accounts and other accounting records of Hans Brumann, Inc., for 'stocktaking investigation for excise tax purposes for the period January 1, 1988 to present' (Exhibit 'C'). In a letter dated October 27, 1988, in connection with the physical count of the inventory (stocks on hand) pursuant to said Letter of Authority, Hans Brumann, Inc. was requested to prepare and make available to the BIR the documents indicated therein (Exhibit 'D').

8. Hans Brumann, inc., did not produce the documents requested by the BIR.<sup>[6]</sup>

9. Similar Letters of Authority were issued to BIR officers to examine the books of accounts and other accounting records of Miladay Jewels, Inc., Mercelles, Inc., Solid Gold International Traders, Inc., (Exhibit 'E', 'G' and 'N') and Diagem Trading Corporation<sup>[7]</sup> for 'stocktaking/investigation for excise tax purpose for the period January 1, 1988 to present'.

10. In the case of Miladay Jewels, Inc. and Mercelles, Inc., there is no account of what actually transpired in the implementation of the Letters of Authority.

11. In the case of Solid Gold International Traders Corporation, the BIR officers made an inventory of the articles in the establishment.<sup>[8]</sup> The same is true with respect to Diagem Traders Corporation.<sup>[9]</sup>

12. On November 29, 1988, private respondents Antonio M. Marco and Jewelry By Marco & Co., Inc. filed with the Regional Trial Court, National Capital Judicial Region, Pasig City, Metro Manila, a petition for declaratory relief with writ of preliminary injunction and/or temporary restraining order against herein petitioners and Revenue Regional Director Felicidad L. Viray (docketed as Civil Case No. 56736) praying that Sections 126, 127(a) and (b) and 150 (a) of the National Internal Revenue Code and Hdg. No 71.01, 71.02, 71.03 and 71.04, Chapter 71 of the Tariff and Customs Code of the Philippines be declared unconstitutional and void, and that the Commissioner of Internal Revenue and Customs be prevented or enjoined from issuing mission orders and other orders of similar nature. x x x

13. On February 9, 1989, herein petitioners filed their answer to the petition. x x x

14. On October 16, 1989, private respondents filed a Motion with Leave to Amend Petition by including as petitioner the Guild of Philippine Jewelers, Inc., which motion was granted. x x x

15. The case, which was originally assigned to Branch 154, was later reassigned to Branch 67.

16. On February 16, 1995, public respondent rendered a decision, the dispositive portion of which reads:

'In view of the foregoing reflections, judgment is hereby rendered, as follows:

1. Declaring Section 104 of the Tariff and the Custom Code of the Philippines, Hdg, 71.01, 71.02, 71.03, and 71.04, Chapter 71 as amended by Executive Order No. 470, imposing three to ten (3% to 10%) percent tariff and customs duty on natural and cultured pearls and precious or semi-precious stones, and Section 150 par. (a) the National Internal Revenue Code of 1977, as amended, renumbered and rearranged by Executive Order 273, imposing twenty (20%) percent excise tax on jewelry, pearls and other precious stones, as INOPERATIVE and WITHOUT FORCE and EFFECT insofar as petitioners are concerned.

2. Enforcement of the same is hereby enjoined.

No cost.

SO ORDERED.'"

Section 150 (a) of Executive Order No. 273 reads:

"SEC. 150. *Non-essential goods.* – There shall be levied, assessed and collected a tax equivalent to 20% based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff

and customs duties; net of the excise tax and value-added tax, of the following goods:

(a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted and fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The term 'imitation thereof' shall include platings and alloys of such metals."

Section 150 (a) of Executive Order No. 273, which took effect on January 1, 1988, amended the then Section 163 (a) of the Tax Code of 1986 which provided that:

"SEC. 163. *Percentage tax on sales of non-essential articles.* – There shall be levied, assessed and collected, once only on every original sale, barter, exchange or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the article herein below enumerated a tax equivalent to 50% of the gross value in money of the articles so sold, bartered. Exchanged or transferred, such tax to be paid by the manufacturer or producer:

(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof, articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The term 'imitations thereof shall include platings and alloys of such metals;"

Section 163(a) of the 1986 Tax Code was formerly Section 194(a) of the 1977 Tax Code and Section 184(a) of the Tax code, as amended by Presidential Decree No. 69, which took effect on January 1, 1974.

It will be noted that, while under the present law, jewelry is subject to a 20% excise tax in addition to a 10% value-added tax under the old law, it was subjected to 50% percentage tax. It was even subjected to a 70% percentage tax under then Section 184(a) of the Tax Code, as amended by P.D. 69.

Section 104, Hdg, Nos. 17.01, 17.02, 17.03 and 17.04, Chapter 71 of the Tariff and Customs Code, as amended by Executive Order No. 470, dated July 20, 1991, imposes import duty on natural or cultured pearls and precious or semi-precious stones at the rate of 3% to 10% to be applied in stages from 1991 to 1994 and 30% in 1995.

Prior to the issuance of E.O. 470, the rate of import duty in 1988 was 10% to 50% when the petition was filed in the court a quo.

In support of their petition before the lower court, the private respondents

submitted a position paper purporting to be an exhaustive study of the tax rates on jewelry prevailing in other Asian countries, in comparison to tax rates levied on the same in the Philippines.<sup>[10]</sup>

The following issues were thus raised therein:

- "1. Whether or not the Honorable Court has jurisdiction over the subject matter of the petition.
2. Whether the petition states a cause of action or whether the petition alleges a justiciable controversy between the parties.
3. Whether Section 150, par. (a) of the NIRC and Section 104, Hdg. 71.01, 71.02, 71.03 and 71.04 of the Tariff and Customs Code are unconstitutional.
4. Whether the issuance of the Mission Order and Letters of Authority is valid and legal."

In the assailed decision, the public respondent held indeed that the Regional Trial Court has jurisdiction to take cognizance of the petition since "jurisdiction over the nature of the suit is conferred by law and it is determine[d] through the allegations in the petition", and that the "Court of Tax Appeals ha no jurisdiction to declare a statute unconstitutional much less issue writs of certiorari and prohibition in order to correct acts of respondents allegedly committed with grave abuse of discretion amounting to lack of jurisdiction".

As to the second issue, the public respondent, made the holding that there exist a justiciable controversy between the parties, agreeing with the statements made in the position paper presented by the private respondents, and considering these statements to be factual evidence, to wit:

"Evidence for the petitioners indeed reveals that government taxation policy treats jewelry, pearls, and other precious stones and metals as non-essential luxury items and therefore, taxed heavily; that the atmospheric cost of taxation is killing the local manufacturing jewelry industry because they cannot compete with the neighboring and other countries where importation and manufacturing of jewelry is not taxed heavily, if not at all; that while government incentives and subsidies exist, local manufacturers cannot avail of the same because officially many of them are unregistered and are unable to produce the required official documents because they operate underground, outside the tariff and tax structure; that local jewelry manufacturing is under threat of extinction, otherwise discouraged, while domestic trading has become more attractive; and as a consequence, neighboring countries, such as Hongkong, Singapore, Malaysia, Thailand, and other foreign competitors supplying the Philippine market either through local channels or through the black market for smuggled goods are the ones who are getting business and making money, while members of the petitioner Guild of Philippine Jewelers, Inc. are constantly subjected to bureaucratic harassment instead of being given by the government the necessary