

FIRST DIVISION

[G.R. No. 117680, February 09, 1996]

**FIRST LEPANTO CERAMICS, INC., PETITIONER, VS. HON. COURT
OF APPEALS AND MARIWASA MANUFACTURING, INC.,
RESPONDENTS.**

D E C I S I O N

VITUG, J.:

Sought to be reversed by the Court is the 13th August 1993 decision of the Court of Appeals nullifying the approval,^[1] dated 10 December 1992, by the Board of Investments ("BOI") of the application of First Lepanto Ceramics, Inc., for an amendment of its Certificate of Registration No. EP 89-452 that would change the registered product from "glazed floor tiles" to "ceramic tiles."

Petitioner **First Lepanto Ceramics, Inc.**, was registered as a "non-pioneer enterprise" with public respondent BOI having been so issued, on 16 October 1989, a Certificate of Registration (No. EP 89-452) under Executive Order No. 226, also known as the Omnibus Investments Code of 1987, in the manufacture of **glazed floor tiles**. Among the specific terms and conditions imposed on First Lepanto's registration were that:

"1. The enterprise shall export at least 50% of its production; (and)

"2. The enterprise shall produce only glazed floor tile."^[2]

First Lepanto was, by virtue of its registration, granted non-fiscal and fiscal incentives by the BOI, including an exemption from taxes on raw materials and tax and duty exemption on its imported capital equipment.

Private respondent **Mariwasa Manufacturing, Inc.**, a competitor of First Lepanto, is also registered with the BOI as a non-pioneer producer of **ceramic tiles** (Certificate of Registration No. 89-427).

In a letter, dated 10 August 1991, addressed to the BOI, First Lepanto requested for an amendment of its registered product to "ceramic tiles" in order to likewise enable it to manufacture ceramic wall tiles; however, before the BOI could act on First Lepanto's request for amendment, Mariwasa and Fil-Hispano Ceramics, Inc., already had on file their separate complaints with the BOI against First Lepanto for violating the terms and conditions of its registration by the use of its tax and duty-free equipment in the production of ceramic wall tiles.

On 30 April 1992, the BOI rendered a decision finding First Lepanto guilty and imposing on the latter a fine of P797,950.40 without prejudice, however, 1) to an imposition of additional penalty should First Lepanto continue to commit the same violation; and 2) to the Board's authority to consider/evaluate First Lepanto's request for an amendment of its certificate of registration, including, among other things, a change in its registered product from "glazed floor tiles" to "ceramic tiles."^[3]

After paying the imposed fine, First Lepanto, on 20 June 1992, formally filed its application with the BOI (docketed **BOI Case No. 92-005**)^[4] to amend its registered product from "glazed floor tiles" to "ceramic tiles."

On 06 August 1992, another verified complaint was filed by Mariwasa with the BOI (docketed **BOI Case No. 92-004**) which asseverated that, despite BOI's finding that First Lepanto had violated the terms and conditions of its registration, the latter still continued with its unauthorized production and sale of ceramic wall tiles. Respondent BOI dismissed the complaint for lack of merit.^[5] Its motion for reconsideration having been denied, Mariwasa appealed the case to the Office of the President.^[6]

In the meantime, First Lepanto caused the publication, on 24 September 1992, in the Manila Bulletin of a notice on the official filing with the BOI of the aforementioned application for amendment of Certificate of Registration No. EP 89-452 (BOI Case No. 92-005).^[7] Mariwasa opposed the application. On 10 December 1992, respondent BOI handed down its decision approving First Lepanto's application.

Mariwasa went to the Court of Appeals via a petition for review, with an application for a writ of preliminary injunction and/or temporary restraining order, assailing the decision of the BOI. On 17 February 1992, the appellate court issued a temporary restraining order enjoining the BOI and First Lepanto from enforcing or executing the assailed ruling. First Lepanto moved for the dismissal of the petition and to lift the restraining order. The motion was denied. On 13 August 1993, the Court of Appeals rendered its now disputed decision^[8] annulling the 10th December 1992 decision of the BOI. First Lepanto moved for a reconsideration but it was denied.

Hence, the instant recourse.

The Court grants the petition.

The challenged decision of the appellate court, annulling the BOI decision in Case No. 92-005, is anchored mainly on the fact that the BOI did not hold in abeyance its action on First Lepanto's application for amendment of its certificate of registration until after BOI Case No. 92-004 would have been finally resolved. It has described the grant by the BOI of First Lepanto's application to be "premature" and "an exercise in futility" in the sense that "(i)f a decision is rendered in aforesaid BOI case (92-004) finding merit in the complaint, it is not farfetch that cancellation of (First Lepanto's) certificate of registration may be ordered." It is unacceptable, in our view, for the appellate court to base its peremptory judgment on a conjecture. i.e., the possibility that BOI Case No. 92-004 could be decided against petitioner, and to second-guess the BOI on what it would do in the event of such an adverse