

SECOND DIVISION

[G.R. No. 238263, November 16, 2020]

DEPARTMENT OF TRADE AND INDUSTRY AND ITS BUREAU OF PRODUCT STANDARDS, PETITIONERS, VS. STEELASIA MANUFACTURING CORPORATION, RESPONDENT.

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari* seeks to reverse and set aside the following dispositions of the Regional Trial Court (RTC)-Br. 142, Makati City in Civil Case No. R-MKT-16-00874-SC, entitled "*Steelasia Manufacturing Corporation v. Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs*:"

1. Decision^[1] dated November 10, 2017 declaring as *ultra vires*, hence, without force and effect the following Regulations of the Department of Trade and Industry (DTI): a) Department Order No. 5, Series of 2008 and its Implementing Rules and Regulations and b) DTI Department Administrative Order No. 15-01, Series of 2015; and
2. Order^[2] dated March 23, 2018 denying reconsideration.

Antecedents

On June 24, 2016, respondent SteelAsia Manufacturing Corporation (Steelasia) sought to nullify through a petition for declaratory relief^[3] the following DTI Regulations:^[4]

1. DTI Department Administrative Order No. 5, Series of 2008 (DAO No. 5);
2. Implementing Rules and Regulations (IRR) of DAO No. 5; and
3. DTI Department Administrative Order No. 15-01, Series of 2015 (DAO No. 15-01).

The following matrix shows the assailed provisions of these DTI Regulations:

DAO No. 5	IRR of DAO No. 5	DAO No. 15-01
4.1.1.1 An importation	3.6 Release of Import Shipment	1.4 For applications with no valid test

<p>without test report may be issued conditional release from BOC's custody by the BPS or DTI Regional/Provincial Office, upon importer's compliance with the BOC's requirements and any other requirements of the DTI.</p>	<p>from the Bureau of Customs shall be allowed only upon advice from BPS or from DTI/Regional/Provincial Office through a conditional release or issuance of ICC or Certificate of Exemption in case of an importation which is a PS Mark License Holder.</p>	<p>report/s, ICC certificate shall be issued, however, inspection, inventory, sampling, and product testing shall be conducted prior to the release of ICC stickers.</p>
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Claiming to be a local manufacturer of steel bars, Steelasia questioned the DTI Regulations for being in conflict with Republic Act No. 4109^[5] (RA 4109) and violative of the equal protection clause.

Specifically, the DTI Regulations allowing the **conditional release** of imported merchandise from the Bureau of Customs (BOC) premises prior to compliance with the required testing, inspection, and clearance are purportedly in conflict with the command of RA 4109 that only those which have been tested, inspected, and certified may be released, thus:

Section 3. **The Bureau shall have charge of the establishment of standards for, and inspection of, all agricultural, forest, mineral, Fish, industrial and all other products of the Philippines** for which no standards have as yet been fixed by law, executive order, rules and regulations; and **the inspection and certification of the quality of commodities imported into the Philippines**, to determine the country of origin of the articles which are the growth, raw materials, manufacture, process, or produce, and **to determine if they satisfy the buyer's or importer's requirements or specifications for domestic consumption**; x x x

x x x x

(d) **Before any commodity imported into the Philippines is discharged and/or released by the Bureau of Customs, to inspect such commodity in order to sample and determine the country of origin where the articles are the growth, raw materials, manufacture, process or produce, and to certify that, the whole shipment satisfies local buyer's importer's requirements as to kind, class, grade, quality or standard which may be indicated on the corresponding customs or shipping papers or commercial documents: *Provided, However,* That imports which are not shown to be**

covered by, or do not conform to, buyer's or importer's requirements, shall be labelled or stamped conspicuously with the caption "do not conform to buyer's or importer's specifications": *Provided, further,* That imports of any article which are the growth, raw materials, manufacture, process or produce of countries wherein the Philippines has no trade agreement shall be confiscated and/or seized at the disposal of the government.

x x x x

Section 6. No customs export entry, import entry, declaration, release certificate, manifest, clearance, import permit, or permit to ship abroad and/or discharge shall be issued for any of the products within the purview of Section three of this Act and/or imported commodity, unless it is first inspected in accordance with provisions of sub-sections (b), (c), (d), and/or (e) of Section four of this Act. x x x x (Emphasis supplied)

Steelasia further claims that the DTI Regulations are violative of the equal protection clause for they allow the conditional release of merchandise to international manufacturers and importers pending compliance with the testing, inspection, and clearance requirements while local manufacturers are not given the same privilege. This differential treatment does not rest on substantial distinctions and is not in any way germane to the purpose of the law.^[6]

By *Comment*^[7] dated September 16, 2016, DTI, through the Office of the Solicitor General (OSG) essentially riposted:

The DTI Regulations allow the conditional physical release of the merchandise only for the purpose of moving them from the heavily congested BOC premises into a suitable, safe, secure and accredited warehouse or storage area where the merchandise shall be stored and continue to be within the control of DTI pending the required product testing and clearance. This provisional measure is compelled by the extremely limited space in the BOC premises, significant increase in the volume of clearance applications and test reports to be evaluated by the Bureau of Product Standards (BPS), consequent delays in shipment release, rise in storage costs, and business slowdown for both providers and consumers alike.^[8]

To require the process of inspection and certification to be done prior to such conditional release is simply illogical. Precisely, it is the conditional release of the merchandise from the BOC premises into a suitable, safe, secure and accredited warehouse or sufficient storage space which paves the way for and makes possible the efficient, expeditious and thorough testing, inspection, and certification of the merchandise. More specific to the steel industry, conditional release is even *necessary* considering that the process of BPS testing, inspection and certification in the customs premises is highly impractical, if not impossible. For this would require the installation of highly specialized equipment and machinery in a laboratory which, at present, can only be done by the Metals Industry Research and Development Center (MIRDC) of the Department of Science and Technology (DOST) in Bicutan, Parañaque City, Metro Manila.^[9]

The conditional release of merchandise for the aforesaid purpose **should not be confused with the final release of the merchandise to the market or in commerce**. It is this second type of release which definitely ought to be preceded by such testing, inspection, and certification. Surely, the process cannot be reversed.

The DTI Regulations do not violate the equal, protection clause. There are substantial distinctions between imported commodities, on one hand, and locally manufactured goods, on the other. It is not true that imported commodities are given more leeway than local products. On the contrary, imported commodities undergo stricter procedures. For example, their inspection and certification are done on per Bill of Lading/Airway Bill basis: Local products, on the other hand, enjoy a wider latitude on this score. Upon compliance with the specific Philippine Standards Quality and/or Safety Certification Marks, the license issued to a local manufacturer is valid for three (3) years subject only to a minimum annual surveillance audit.^[10]

The Trial Court's Ruling

By Decision^[11] dated November 10, 2017, the trial court declared DAO No. 5 and its Implementing Rules and Regulations, and DAO. No. 15-01, *ultra vires* and with no force and effect. The court held that the inspection of imported merchandise must precede their release, not the other way around. This is to ensure that they comply with the applicable standards before they are sold and distributed in the market. Also, the fact that there is currently only one testing center for steel bars in the country does not justify the conditional release of imported merchandise prior to testing. The BPS, after all, is required by law to have its own facilities for product testing and analysis. DTI must rely on the effective implementation of its procedures rather than cut corners in violation of the law.

As for the alleged violation of the equal protection clause, the trial court said "[it] is not ready to pronounce that locally manufactured steel bars and those imported abroad must be similarly treated."

The trial court thus disposed of the case, as follows:

WHEREFORE, the petition is GRANTED. The court declares Department of Trade and Industry Department Order No. 5, Series of 2008 & its Implementing Rules and Regulations, and Department of Trade and Industry Department Administrative Order No. 15-01, Series of 201 5, *ultra vires* and of no force and effect.

The Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs are enjoined to stringently implement Republic Act No. 4109.

SO ORDERED.

By Order^[12] dated March 23, 2018, the trial court denied reconsideration.

The Present Appeal

Invoking the Court's appellate jurisdiction over pure questions of law, the DTI and

the BPS., through the OSG^[13] now seek affirmative relief and pray that the foregoing dispositions be reversed and set aside.^[14] The OSG reiterates its arguments before the trial court and brings to fore the power of the DTI Secretary to promulgate rules and regulations to implement the provisions of trade and industry laws for the protection of the consumers. One such law is Republic Act No. 7394 (RA 7394), the Consumer Act of the Philippines (1992) which decrees that consumer products may only be **distributed in commerce** after they shall have been tested, inspected, and certified in accordance with the DTI's quality and safety standards, thus:^[15]

ARTICLE 14. Certification of Conformity to Consumer Product Standards.
—The concerned department shall aim at having consumer product standards established for every consumer product so that consumer products shall be **distributed in commerce only after inspection and certification** of its quality and safety standards by the department. The manufacturer shall avail of the Philippine Standard Certification Mark which the department shall grant after determining the product's compliance with the relevant standard in accordance with the implementing rules and regulations. (Emphasis supplied in the petition)

DAO No. 5 is consistent on this point:

4.1.1.2 Pending the issuance of the Import Commodity Clearance, **no distribution, sale, use and/or transfer to any place other than the warehouse duly approved by the BPS/DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person.** To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release, the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection body/inspector conduct verification, inspection/inventory of the import shipment. (Emphasis supplied in the petition)

So is the Implementing Rules and Regulations of DAO No. 5:

4.1.1.6.1 If the results of laboratory test disclosed product **noncompliance**, the import shipment **shall be deemed non-compliant. BPS shall disapprove the ICC application** and the importer shall be advised about the denial within fifteen (15) days after the evaluation.

X X X X

4.1.1.6.4 It both test failed to conform to the requirements of the specific standards, the importer will be advised by BPS to **re-export the products** with the provisions of the Tariff and Customs Code or be destroyed by appropriate agency. **Only after reassessment and subsequent product compliance shall the importer be issued ICC and be allowed by BPS to market the product.**

and DAO No. 15-01, viz.: