

THIRD DIVISION

[G.R. No. 202789, June 22, 2015]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PUREGOLD DUTY FREE, INC., RESPONDENT.**

DECISION

VELASCO JR., J.:

At bar is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 9, 2012 Decision and July 18, 2012 Resolution of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 723 (CTA Case No. 7812). The CTA *en banc* upheld the November 25, 2010 and January 20, 2011 Resolutions of the CTA Second Division stating that herein respondent Puregold Duty Free, Inc. (Puregold) is entitled to, and properly availed of, the tax amnesty under Republic Act No. (RA) 9399^[1] and so is no longer liable for deficiency value-added tax (VAT) and excise tax for its importation of distilled spirits, wines, and cigarettes from January 1998 to May 2004.

As culled from the records, the facts of this case are:

Puregold is engaged in the sale of various consumer goods exclusively within the Clark Special Economic Zone (CSEZ),^[2] and operates its store under the authority and jurisdiction of Clark Development Corporation (CDC) and CSEZ.

As an enterprise located within CSEZ and registered with the CDC, Puregold had been issued Certificate of Tax Exemption No. 94-4,^[3] later superseded by Certificate of Tax Exemption No. 98-54,^[4] which enumerated the tax incentives granted to it, including tax and duty-free importation of goods. The certificates were issued pursuant to Sec. 5 of Executive Order No. (EO) 80,^[5] extending to business enterprises operating within the CSEZ all the incentives granted to enterprises within the Subic Special Economic Zone (SSEZ) under RA 7227, otherwise known as the "Bases Conversion and Development Act of 1992."

Notably, Sec. 12 of RA 7227 provides duty-free importations and exemptions of businesses within the SSEZ from local and national taxes.^[6] Thus, in accordance with the tax exemption certificates granted to respondent Puregold, it filed its Annual Income Tax Returns and paid the five percent (5%) preferential tax, in lieu of all other national and local taxes for the period of January 1998 to May 2004.^[7]

On July 25, 2005, in *Coconut Oil Refiners v. Torre*,^[8] however, this Court annulled the adverted Sec. 5 of EO 80, in effect withdrawing the preferential tax treatment heretofore enjoyed by all businesses located in the CSEZ.

On November 7, 2005, then Deputy Commissioner for Special Concerns/OIC-Large

Taxpayers Service of the Bureau of Internal Revenue (BIR) Kim Jacinto-Henares issued a Preliminary Assessment Notice regarding unpaid VAT and excise tax on wines, liquors and tobacco products imported by Puregold from January 1998 to May 2004. In due time, Puregold protested the assessment.

Pending the resolution of Puregold's protest, Congress enacted RA 9399,^[9] specifically to grant a tax amnesty to business enterprises affected by this Court's rulings in *John Hay People's Coalition v. Lim*^[10] and *Coconut Oil Refiners*. Under RA 9399, availment of the tax amnesty relieves the qualified taxpayers of any civil, criminal and/or administrative liabilities arising from, or incident to, nonpayment of taxes, duties and other charges, viz:

SECTION 1. *Grant of Tax Amnesty.* - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone [CSEZ] created under Proclamation No. 163, series of 1993 x x x **may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay People's Coalition v. Lim, et. al., G. R. No. 119775 dated 24 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G. R. No. 132527 dated 29 July 2005**, by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five Thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, that **the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.** (emphasis added)

Sec. 2. Immunities and Privileges. Those who have availed themselves of the tax amnesty and have fully complied with all its conditions shall be relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty granted under Section 1 herein.^[11]

On July 27, 2007, Puregold availed itself of the tax amnesty under RA 9399, filing for the purpose the necessary requirements and paying the amnesty tax.^[12]

Nonetheless, on October 26, 2007, Puregold received a formal letter of demand from the BIR for the payment of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (P2,780,610,174.51), supposedly representing deficiency VAT and excise taxes on its importations of alcohol and tobacco products from January 1998 to May 2004.

In its response-letter, Puregold, thru counsel, requested the cancellation of the assessment on the ground that it has already availed of the tax amnesty under RA 9399. This notwithstanding, the BIR issued on June 23, 2008 a Final Decision on Disputed Assessment stating that the availment of the tax amnesty under RA 9399 did not relieve Puregold of its liability for deficiency VAT, excise taxes, and inspection fees under Sec. 131(A) of the 1997 National Internal Revenue Code (1997 NIRC).

On July 22, 2008, Puregold filed a Petition for Review with the CTA questioning the timeliness of the assessment and arguing that the doctrines of operative fact and non-retroactivity of rulings bar the Commissioner of Internal Revenue (CIR) from assessing it of deficiency VAT and excise taxes. More importantly, Puregold asserted that, by virtue of its availment of the tax amnesty granted by RA 9399, it has been relieved of any civil, criminal and/or administrative liabilities arising from or incident to non payment of taxes, duties and other charges.

Answering, the CIR argued that pursuant to Sec. 131(A) of the 1997 NIRC, only importations of distilled spirits, wines, and cigarettes to the freeports in Subic, Cagayan, and Zamboanga, as well as importations by government-owned duty free shops, are exempt from the payment of VAT and excise taxes.

Following an exchange of motions, the CTA 2nd Division issued on November 25, 2010 a Resolution ordering the cancellation of the protested assessment against Puregold in view of its availment of tax amnesty under RA 9399, viz:

In substantiating its compliance with Section 1 of Republic Act No. 9399, petitioner submitted Certificates of Registration/Tax Exemption² issued by the Clark Development Corporation, its Amnesty Tax Payment Form³ and its BIR Tax Payment Deposit Slip⁴.

Based on the foregoing, the Court finds that petitioner has sufficiently established its compliance with the requirements provided under R.A. No. 9399.

As to whether or not petitioner's tax liabilities are excluded under R.A. 9399; it is significant to note that what petitioner seeks to cancel in its petition for review and *Motion for Early Resolution*, is respondent's (CIR) assessment of deficiency excise tax and Value Added Tax (VAT) on **imported** alcohol and tobacco products.

Clearly, these are not taxes on articles, raw materials, capital goods,

equipment and consumer items **removed** from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. This may be verified in respondent's Formal Letter of Demand where it was stated that the assessment was made against petitioner's importation of wines, liquors and tobacco products. In view thereof, the deficiency tax assessments made against petitioner, which were sought to be cancelled in the instant petition, are not excluded under R.A. No. 9399.

As to respondent's contention that petitioner is not entitled to avail of the tax amnesty provided under R.A. No. 9399 on the basis of Section 131 of the NIRC of 1997, this Court is not persuaded.

The coverage of the tax amnesty is the difference of all national and local taxes that petitioner is liable under the Local Government Code, the Tax Code and other pertinent laws, and the 5% tax that petitioner had previously been liable pursuant to Executive Order (EO) No. 80.

Being liable to VAT and excise taxes on importations of alcohol and cigars under Section 131 of the 1997 Tax Code is not a condition to be excluded from the tax amnesty. Contrarily, being liable to such taxes is obviously contemplated by RA No. 9399 thru the phrase "**all national and local tax impositions under relevant tax laws, rules and regulations.**" If petitioner is liable to VAT and excise taxes pursuant to the provision of Section 131 (A) of the 1997 Tax Code, then such amount of taxes will be used in determining the **difference** mandated by R.A. 9399, which in turn, is the subject of the latter law. (emphasis added)

On December 15, 2010, the CIR moved for reconsideration reiterating her previous argument that the national and local impositions mentioned in RA 9399 do not cover the deficiency taxes being assessed against Puregold.

By Resolution of January 20, 2011, the CTA 2nd Division denied CIR's Motion for Reconsideration, holding:

After a close scrutiny of the arguments raised by respondent (CIR), this Court finds that the same contentions were already raised in her "*Comment (Re: Petitioner's Manifestation of Compliance)*" filed on November 15, 2010 and which have already been sufficiently addressed in the assailed Resolution dated November 25, 2010.

To reiterate, the liability for VAT and excise taxes on importations of alcohol and cigars under Section 131 of the NIRC of 1997, as amended, is contemplated under R.A. 9399 when it provides that "*registered business enterprises operation prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993, x x x may avail themselves of the benefits of remedial tax amnesty herein granted on **all applicable tax and duty liabilities, inclusive of fines,***

penalties, interest and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay Peoples Coalition vs. Lim, et al., G.R. No. 119775 dated 23 October 2003 and Coconut Oil Refiners Association, Inc. vs. Torres, et al. G.R. No. 132527 dated 29 July 2005.

Petitioner (Puregold) incurred liability for the assessed deficiency VAT, excise taxes and inspection fees when its tax incentives was in effect removed by the Supreme Court when it ruled in the case of *Coconut Oil Refiners Association, Inc. vs. Torres*, that the incentives provided under R.A. No. 7227 extends only to business enterprises registered within the Subic Special Economic Zone (SSEZ). Since, petitioner's tax liabilities accrued because of the said ruling, it is clear that petitioner's tax liabilities fall within the coverage of R.A. No. 9399.

On February 25, 2011, the CIR filed a Petition for Review with the CTA *en banc* assailing the adverted Resolutions of the CTA 2nd Division, predicated her recourse on the same arguments earlier presented. On May 9, 2012, the CTA *en banc* promulgated its Decision denying the CIR's petition, as follows:

After a careful review of the records and arguments raised by the petitioner, we agree with respondent's (Puregold) contention that the same are merely a rehash of previous arguments already passed upon and discussed by the Court.

Petitioner's arguments rely on (1) the applicability of Section 131(A) of the National Internal Revenue Code of 1997 (Tax Code); and, (2) that the subject deficiency taxes are not covered by the tax amnesty under R.A. No. 9399. These contentions have been discussed and resolved by the CTA Second Division and there are no compelling reasons to deviate from the said rulings. x x x

The CIR's motion for reconsideration was likewise denied by the CTA *en banc* in its Resolution dated July 18, 2012 on the ground that the same is a mere rehash of previous arguments already considered and denied.

Unmoved by the CTA's repeated denial of its contention, the CIR filed with this Court the present petition raising the following errors allegedly committed by the tax court, viz:

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THE HONORABLE CTA *EN BANC* GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE TAX AMNESTY TAX OF PHP 25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND