

## SECOND DIVISION

[ G.R. No. 183664, July 28, 2014 ]

**AIRLIFT ASIA CUSTOMS BROKERAGE, INC. AND ALLAN G. BENEDICTO, PETITIONERS, VS. COURT OF APPEALS, COMMISSIONER OF THE BUREAU OF CUSTOMS, AND THE SECRETARY OF FINANCE RESPONDENTS.**

### DECISION

**BRION, J.:**

Through a petition for *certiorari* under Rule 65 of the Rules of Court filed before the Court, the petitioners – Airlift Asia Customs Brokerage, Inc. and Allan G. Benedicto – assail the decision dated February 28, 2008<sup>[1]</sup> and the resolution dated May 27, 2008<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88291.<sup>[3]</sup> These CA rulings reversed and set aside the decision dated September 6, 2006<sup>[4]</sup> of the Regional Trial Court (RTC) of Manila, Branch 8, in Civil Case No. 06-115029, which upheld the validity of **Customs Administrative Order No. 3-2006** (CAO 3-2006).

#### The Facts

CAO 3-2006 was issued by the then Commissioner of the Bureau of Customs (BOC) Napoleon L. Morales, with the approval of then Secretary of Finance Margarito B. Teves, on March 2, 2006. It covers the Rules and Regulations Governing the Accreditation of the Customs Brokers Transacting with the BOC and essentially requires the accreditation by the BOC of customs brokers who intend to practice before the BOC.

Part I of CAO 3-2006 defines accreditation as “*the process for registration and/or listing of customs brokers desiring to engage in customs brokers practice.*”<sup>[5]</sup> Accordingly, the accreditation process is included in the issuance’s definition of a “custom broker”:

2.1. “Customs Broker” refers to any bona fide holder of a valid Certificate of Registration/Personal Identification Card issued by the Professional Regulatory Board and the Professional Regulatory Commission, **who is accredited to practice in the Bureau of Customs.** [emphasis supplied]

Thus, **CAO 3-2006 requires “customs brokers desiring to practice their profession at the BOC [to] apply for accreditation and [to] obtain a Certificate of Accreditation before they may engage in customs brokerage practice.”**<sup>[6]</sup> Once accredited, customs brokers are entitled to practice their profession in any port of entry in the Philippines.<sup>[7]</sup>

The petitioners assailed the validity of CAO 3-2006 through an action for declaratory relief before the Regional Trial Court of Manila, Branch 8.<sup>[8]</sup> They primarily claimed that CAO 3-2006 was issued without authority, contravenes Republic Act No. 9280 (RA 9280) or the *Customs Brokers Act of 2004*, and violates their right to practice the customs broker profession.

**The RTC upheld the petitioners' contentions and nullified CAO 3-2006.**<sup>[9]</sup> It found that the BOC Commissioner had no authority to issue rules governing the practice of the customs brokerage profession.<sup>[10]</sup> This power, initially lodged with the Commissioner of the Civil Service under Section 3409 of the Tariff and Customs Code of the Philippines (*TCCP*), had been transferred upon the passage of RA 9280 to the Professional Regulatory Board for Customs Brokers (*PRBCB*), which is under the supervision and administrative control of the Professional Regulation Commission (*PRC*).<sup>[11]</sup>

The trial court also held that the required accreditation amounted to a licensing requirement prohibited under Section 19 of RA No. 9280. This provision states that customs brokers who have been issued certificates of registration by the PRBCB shall be allowed to practice the profession in any collection district without the need of securing another license from the BOC. By requiring accreditation, CAO 3-2006 imposed an additional qualification not found in the law.<sup>[12]</sup>

On appeal, **the CA reversed the RTC ruling** finding its construction of CAO 3-2006 rigid and crippling on the BOC's efforts to ensure efficient customs administration and collection of taxes and duties. Although the accreditation requirement was an added burden to customs brokers, it nevertheless bore a reasonable connection to the BOC's aim to ensure accountability and integrity in the transactions involving customs duties and tariff laws.<sup>[13]</sup> Accordingly, **the CA reversed the RTC ruling and declared CAO 3-2006 valid.** It also denied the petitioners' motion for reconsideration.

The petitioners assail the CA rulings through the present *certiorari* petition with the Court.

### **The Court's Ruling**

The Court finds the petition **meritorious**.

***RA No. 9280 expressly repealed Sections 3401 to 3409 of the TCCP and transferred the supervision and regulation of the customs brokerage profession from the Board of Examiners to the PRBCB.***

Prior to the passage of RA 9280, the TCCP (specifically, Sections 3401 to 3409 thereof) governed the entry, regulation, and supervision of the customs broker profession.

Sections 3401 and 3402 of the TCCP required all applicants for customs brokers'

certificates to pass a written examination given by the Board of Examiners for Customs Brokers<sup>[14]</sup> under the supervision of the Civil Service Commission (CSC).<sup>[15]</sup> The Board of Examiners was composed of the BOC Commissioner as *ex-officio* chairman, the Tariff Commissioner, and three other members appointed by the President.<sup>[16]</sup> An examinee who passes the exam would be issued a certificate as customs broker signed by the members of the Board of Examiners and the Civil Service Commissioner. If the certified customs broker would like to establish a customs brokerage business in any port in the Philippines, he/she must secure an annual license from the Collector of Customs of the port concerned.<sup>[17]</sup>

A complaint for suspension or revocation of the custom broker's certificate is filed with the Board of Examiners, which conducts the investigation and submits its findings and recommendations with the Civil Service Commissioner who makes the final decision. If the charge involves smuggling, the BOC Commissioner may likewise revoke his/her license.<sup>[18]</sup>

Considering the BOC Commissioner's functions as *ex-officio* Chairman of the Board of Examiners, the TCCP has effectively allowed him to exercise control over the customs broker profession. The enactment of RA 9280, however, brought about significant changes.

**Section 39 of RA 9280 expressly repealed the TCCP provisions (Section 3401 to 3409) on the customs brokers profession.** Section 39 of RA 9280 further declared that "all laws...and parts thereof which are inconsistent with [RA 9280] are [deemed] modified, suspended, or repealed accordingly."

In lieu of the Board of Examiners, RA 9280 created the PRBCB<sup>[19]</sup> whose members are appointed by the President from a list of recommendees submitted by the PRC which has supervisory and administrative control over the PRBCB. **Significantly, RA 9280 excluded the BOC Commissioner as member of the PRBCB.** The exclusion of the BOC Commissioner as a member of the PRBCB evinces the legislative intent to remove any power he previously exercised over custom brokers, and to transfer the supervision, control and regulation of this profession to the PRBCB. This intent is likewise apparent from a reading of the powers granted to the PRBCB:

Section 7. *Powers and Functions of the Board.* – x x x

**(b) Supervise and regulate the licensure, registration, and practice of customs brokers profession;**

x x x x

(e) Register successful examinees in the licensure examination and issue the corresponding Certificate of Registration and Professional Identification Card;

x x x x

(g) Look into the conditions affecting the practice of customs

brokerage, **adopt measures for the enhancement of the profession and the maintenance of high professional, technical, and ethical standards**, and conduct ocular inspection of places where customs brokers practice their profession; [emphasis supplied]

By conferring these powers on the PRBCB, the declared policy of RA 9280 to professionalize the practice of the customs broker profession is executed and fulfilled.<sup>[20]</sup>

The assailed CA decision, however, declared that the passage of RA 9280 did not divest the BOC Commissioner of his authority over customs brokers. The BOC Commissioner retains the general power “to regulate the activities of licensed customs brokers insofar as the enforcement of tariff laws and prevention of smuggling and other illegal schemes to defraud the government of lawful revenues.”<sup>[21]</sup> It adds that “[t]o strip the BOC [Commissioner] of any disciplinary and supervisory authority over license customs brokers... would not only cripple the [BOC’s] intensified drive to combat smuggling and derail the all-out program...to increase collection targets.”<sup>[22]</sup>

Although we cannot deny that the BOC Commissioner has the mandate to enforce tariff laws and prevent smuggling, these powers do not necessarily include the power to regulate and supervise the customs broker profession through the issuance of CAO 3-2006.

The BOC Commissioner’s power under Section 608 of the TCCP is a *general* grant of power to promulgate rules and regulations necessary to enforce the provisions of the TCCP. Under the rules of statutory construction, this general rule-making power gives way to the *specific* grant of power to promulgate rules and regulations *on the practice of customs brokers profession* to the CSC Commissioner under Section 3409 of the TCCP.<sup>[23]</sup> Indeed, in the exercise of this specific power, the Board of Examiners (of which the BOC Commissioner serves as *ex-officio* chairman) was to perform only a recommendatory role. With the repeal of Section 3409 of the TCCP by RA 9280, this specific rule-making power was transferred to the PRBCB to complement its supervisory and regulatory powers over customs brokers. Section 37 of RA 9280 provides:

SEC. 37. Implementing Rules and Regulations. – The [PRBCB], subject to the approval by the Commission, in coordination with the accredited professional organization, shall issue and promulgate the rules and regulations, including the Code of Ethics for customs broker profession needed to implement the provision of this Act.

The BOC, like the Bureau of Internal Revenue (*BIR*), performs a critical role in government revenue collection. The integrity and efficiency of transactions before both these agencies is important, and all persons dealing with them must strictly adhere to their respective rules and regulations. The similarity in the functions and concerns of the BOC and the BIR, however, does not support a grant of power to accredit customs brokers to the BOC Commissioner. Unlike the BOC Commissioner