

## EN BANC

**[ A.M. No. RTJ-07-2063 (Formerly OCA I.P.I. No. 07-2588-RTJ), June 26, 2009 ]**

**REPUBLIC OF THE PHILIPPINES, COMPLAINANT, VS. JUDGE RAMON S. CAGUIOA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 74, RESPONDENT.**

**[A.M. NO. RTJ-07-2064 (FORMERLY OCA I.P.I. NO. 07-2608-RTJ)]**

**COMMISSIONER OF CUSTOMS, COMPLAINANT, VS. JUDGE RAMON S. CAGUIOA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 74, RESPONDENT.**

**[A.M. NO. RTJ-07-2066 (FORMERLY OCA I.P.I. NO. 07-2628-RTJ)]**

**CHARLES T. BURNS, JR., COMPLAINANT, VS. JUDGE RAMON S. CAGUIOA, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 74, AND CHRISTOPHER T. PEREZ, SHERIFF IV, REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 74, RESPONDENTS.**

## DECISION

### PER CURIAM:

*Judges are not common men and women, whose errors men and women forgive and time forgets. Judges sit as the embodiment of the people's sense of justice, their last recourse where all other institutions have failed. -- Dela Cruz v. Pascua, A.M. No. RTJ-99-1461, June 26, 2001, 359 SCRA 569.*

Before us are three administrative cases against Judge Ramon S. Caguioa, Presiding Judge of Branch 74, Regional Trial Court (RTC) of Olongapo City.

### I.

#### **A.M. No. RTJ-07-2063**

On November 29, 2006, the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), charged Judge Ramon S. Caguioa with gross ignorance of the law, manifest partiality and conduct prejudicial to the best interest of the service. The complaint concerned Civil Case No. 102-0-05 entitled "Indigo Distribution Corp. Inc., et al. vs. The Hon. Secretary of Finance, et al." for Declaratory Relief with Prayer for Temporary Restraining Order (TRO) and Preliminary Mandatory Injunction, pending before the *sala* of respondent judge.

Complainant Republic is the respondent in said civil case. Petitioners therein, Indigo Distribution Corp. Inc., et al. (Indigo, et al.), sought to nullify the implementation of Section 6 of Republic Act (R.A.) No. 9334 as unconstitutional.<sup>[1]</sup> Section 6 provides:

**SEC. 6.** Section 131 of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:

"SEC. 131. *Payment of Excise Taxes on Imported Articles.* -

"(A) *Persons Liable.* - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

"In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

"The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, *even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory." [Emphasis supplied.]

x x x

Indigo, et al., petitioners in Civil Case No. 102-0-05, are importers and traders licensed to operate inside the Subic Bay Freeport Zone. By virtue of R.A. No. 7227, <sup>[2]</sup> enacted in 1992, they were granted Certificates of Registration and Tax

Exemptions by the Subic Bay Metropolitan Authority (SBMA). With the enactment of the abovequoted provision of R.A. No. 9334 in 2005, however, they are now subject to sin taxes or excise taxes on tobacco and alcohol products.

On February 7, 2005, SBMA issued a Memorandum directing the departments concerned to require importers in the Subic Bay Freeport Zone to pay the corresponding duties and taxes on their importations of cigars, cigarettes, liquors and wines before they are cleared and released from the freeport.

Unwilling to pay said duties and taxes, petitioners brought before the RTC of Olongapo City a special civil action, Civil Case No. 102-0-05 for declaratory relief to have certain provisions of R.A. No. 9334 declared as unconstitutional. Alleging great and irreparable loss and injury, they prayed for the issuance of a writ of preliminary injunction and/or Temporary Restraining Order (TRO) and preliminary mandatory injunction to enjoin the directives issued by the Republic, as represented by the Secretary of Finance, Commissioner of the Bureau of Internal Revenue, Commissioner of Customs, Collector of Customs of the Port of Subic, and the Administrator of the SBMA.

In an Order dated May 4, 2005, respondent judge granted the application for the issuance of a writ of preliminary injunction. He enjoined the public respondents from implementing the pertinent provisions of R.A. No. 9344. He also approved the injunction bond amounting to one million pesos for all petitioners. On May 11, 2005, he issued a writ of preliminary injunction. Respondent judge found that: (1) the tax exemptions under R.A. No. 7227 granted to petitioners therein, Indigo, et al., coupled with their Certificates of Registration and Tax Exemption from the SBMA, vested in them a clear and unmistakable right or right *in esse* that would be violated should R.A. No. 9334 be implemented; and the invasion of such right was substantial and material, as they would be compelled to pay more than what they should by way of taxes to the national government; (2) the *prima facie* presumption of validity of R.A. No. 9334 had been overcome by petitioners; respondent judge held that as a partial amendment of the National Internal Revenue Code (NIRC) of 1997, as amended, R.A. No. 9334 is a general law that could not prevail over a special statute like R.A. No. 7227; (3) the repealing provision of R.A. No. 9334 does not expressly mention the repeal of R.A. No. 7227; hence, its repeal could only be an implied repeal, which is not favored; and since R.A. No. 9334 imposes new tax burdens, whatever doubts arising therefrom should be resolved against the taxing authority and in favor of the taxpayer; (4) R.A. No. 9334 violates the terms and conditions of petitioners' subsisting contracts with SBMA, which are embodied in their Certificates of Registration and Exemptions in contravention of the constitutional guarantee against the impairment of contractual obligations; (5) greater damage would be inflicted on petitioners if the writ of injunction would not be issued as compared with the injury that the government and the general public would suffer from its issuance; and that the damage that petitioners are bound to suffer once the assailed statute is implemented - including the loss of confidence of their foreign principals, loss of business opportunity and unrealized income, and the danger of the closing down of their businesses due to uncertainty of continued viability - could not be measured accurately by any standard; and (6) with regard to the rule that injunction is improper to restrain the collection of taxes, respondent judge held that what was sought to be enjoined was not *per se* the collection of taxes, but the implementation of a statute that had been found preliminarily to be unconstitutional.

The Republic filed a petition for certiorari and prohibition before this Court to annul said Order and the Writ of Preliminary Injunction that was issued pursuant to such Order. The petition, docketed as G.R. No. 168584, also sought to enjoin, restrain and inhibit respondent judge from enforcing the impugned issuances and from further proceeding with the trial of Civil Case No. 102-0-05.

During the pendency of the petition, respondent judge granted various *ex parte* motions for intervention of different corporations claiming to be similarly situated with petitioner Indigo, and allowed them to ride on the one million peso injunctive bond previously posted by Indigo.

Complainant Republic alleged that it was denied due process because it did not receive a copy of the motions for intervention, which were favorably acted upon by respondent judge. It was only on August 11, 2005, December 1, 2005, and July 19, 2006 when complainant learned of respondent's issuances in favor of the movants. These Orders of respondent judge granted the separate motions of Metatrans International Trading Corp. and Hundred Young Subic International, Inc., Siam Corporations, Transglobe Subic Corp. and Diageo Freeport Philippines, Inc., that they be allowed to intervene in Civil Case No. 102-0-05.

Respondent judge immediately implemented said orders despite the subsequent motions for reconsideration filed by complainant on September 7, 2005, December 16, 2005, and August 14, 2006. It took respondent judge almost 10 months to act on 1 out of the 3 motions filed by the government. On July 17, 2006, complainant received the Order dated July 5, 2006 issued by respondent judge denying its Motion for Reconsideration dated September 7, 2005.

On September 15, 2006, complainant likewise sought to nullify the August 11, 2005, December 1, 2005, and July 19, 2006 Orders of respondent judge before this Court. The petition, docketed as G.R. No. 174385, has not been resolved to date.

On July 31, 2007, this Court, upon the recommendation of the Office of the Court Administrator, considering the two other administrative cases filed against respondent, resolved to preventively suspend respondent judge without pay, pending the resolution of said administrative cases.

On October 9, 2007, we resolved to refer the consolidated administrative cases to an Associate Justice of the Court of Appeals for investigation, report and recommendation.

On October 15, 2007, this Court declared the May 4, 2005 Order of respondent judge and the Writ of Preliminary Injunction, subject of G.R. No. 168584, null and void, to wit:

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The writ of certiorari to nullify and set aside the Order of May 4, 2005 as well as the Writ of Preliminary Injunction issued by respondent Judge Caguioa on May 11, 2005 is **GRANTED**. The assailed Order and Writ of Preliminary Injunction are hereby declared **NULL AND VOID** and accordingly **SET ASIDE**. The writ of prohibition prayed for is, however, **DENIED**.

We held that respondent judge gravely abused his discretion in ordering the issuance of the Writ of Preliminary Injunction. For a writ of preliminary injunction to issue, the applicant must establish that (1) there is a clear and unmistakable right to be protected; (2) the invasion of the right sought to be protected is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. We ruled that petitioners failed to show a clear legal right that ought to be protected by the court. The rights granted under the Certificates of Registration and Tax Exemption of petitioners are not absolute and unconditional as to constitute rights *in esse*. These certificates granting petitioners a "permit to operate" their respective businesses are in the nature of licenses, which can be revoked at any time. There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege, a tax exemption may be modified or withdrawn at will by the granting authority.

Further, the feared injurious effects of the imposition of duties, charges and taxes on imported tobacco and alcohol products on petitioners' businesses cannot possibly outweigh the dire consequences that the non-collection of taxes would wreak on the government. With regard to the injunction bond, we also found respondent judge to have overstepped his discretion when he arbitrarily fixed the injunction bond of petitioners at only P1 million. Considering the number of petitioner enterprises and the volume of their businesses, the injunction bond is undoubtedly not sufficient to answer for the damages that the government was bound to suffer as a consequence of the suspension of the implementation of the assailed provisions of R.A. No. 9334. Section 4(b), Rule 58 of the Rules of Court, provides that a bond is executed in favor of the party enjoined to answer for *all* damages that it may sustain by reason of the injunction.

Nonetheless, we found lacking the requisite proof of respondent judge's alleged partiality; thus, we found no ground to prohibit him from proceeding with the case for declaratory relief.

On December 11, 2007, this Court granted the request of respondent judge that he be allowed to draw his income as a judge during the pendency of the administrative cases against him.

## **II.**

### **A.M. No. RTJ-07-2064**

On December 21, 2006, the Commissioner of Customs (Commissioner) charged Judge Ramon S. Caguioa with gross ignorance of the law, manifest partiality and conduct prejudicial to the best interest of the service. The complaint concerned Civil Case No. 153-0-2006 entitled "Andres D. Salvacion Jr. vs. Gracia Z. Caringal, et al.," a Petition for Mandamus, with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction, which is pending before the *sala* of respondent judge.

Petitioner Salvacion in Civil Case No. 153-0-2006 was formerly the District Collector of the Port of Subic. On March 20, 2006, complainant Commissioner issued Customs Personnel Order (CPO) No. B-149-2006, reassigning Salvacion, among others, to the Office of the Commissioner; and designating, in his place as Acting District Collector of the Port of Subic, respondent Caringal.