595 Phil. 1051

SECOND DIVISION

[G.R. No. 172457, December 24, 2008]

CJH DEVELOPMENT CORPORATION, PETITIONER, VS. BUREAU OF INTERNAL REVENUE, BUREAU OF CUSTOMS, DISTRICT COLLECTOR OF CUSTOMS EDWARD O. BALTAZAR, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before us is a petition for review on certiorari[1] seeking the reversal of the orders dated 14 October 2005[2] and 04 April 2006[3] of the Regional Trial Court (RTC) of Baguio City, Branch 5. The RTC dismissed the petition for declaratory relief filed by petitioner CJH Development Corporation (CJH). This petition was brought directly to this Court since it involves a pure question of law in accordance with Rule 50 of the 1997 Revised Rules of Court.

Proclamation No. 420 (the Proclamation) was issued by then President Fidel V. Ramos to create a Special Economic Zone (SEZ) in a portion of Camp John Hay in Baguio City. Section 3[4] of the Proclamation granted to the newly created SEZ the same incentives then already enjoyed by the Subic SEZ. Among these incentives are the exemption from the payment of taxes, both local and national, for businesses located inside the SEZ, and the operation of the SEZ as a special customs territory providing for tax and duty free importations of raw materials, capital and equipment.[5]

In line with the Proclamation, the Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 12-97[6] while the Bureau of Customs (BOC) issued Customs Administrative Order No. 2-98.[7] The two issuances provided the rules and regulations to be implemented within the Camp John Hay SEZ. Subsequently, however, Section 3 of the Proclamation was declared unconstitutional in part by the Court *en banc* in *John Hay Peoples Alternative Coalition v. Lim*, [8] when it ruled that:

> WHEREORE, the second sentence of Section 3 of Proclamation No. 420 is hereby declared NULL and VOID and is accordingly declared of no legal force and effect. Public respondents are hereby enjoined from implementing the aforesaid void provision.
>
> Proclamation No. 420, without the invalidated portion, remains valid and effective.[9]

The decision attained finality when the Court *en banc* denied the motion for reconsideration through a resolution dated 29 March 2005.[10]

While the motion for reconsideration was pending with the Court, on 16 January 2004 the Office of the City Treasurer of Baguio sent a demand letter[11] which stated that:

> In view of the Supreme Court decision dated October 24, 2003 on G.R. No. 119775, declaring null and void Section 3 of Proclamation 420 on applicable incentives of Special Economic Zones, we are sending you updated statements of real property taxes due on real estate properties declared under the names of the Bases Conversion and Development Authority and Camp John Hay Development Corporation totaling P101,935,634.17 inclusive of penalties, as of January 10, 2004.
>
> May we request for the immediate settlement of the above indebtedness, otherwise this office shall be constrained to hold the processing of your business permit pursuant to Section 2 C c.1 of Tax Ordinance 2000-001 of Baguio City.

Five months later, on 26 May 2005, the BOC followed suit and demanded[12] of CJH the payment of P71,983,753.00 representing the duties and taxes due on all the importations made by CJH from 1998 to 2004. For its part, the BIR sent a letter dated 23 May 2005 to CJH wherein it treated CJH as an ordinary corporation subject to the regular corporate income tax as well as to the Value Added Tax of 1997.[13]

CJH questioned the retroactive application by the BOC of the decision of this Court in G.R. No. 119775. It claimed that the assessment was null and void because it violated the non-retroactive principle under the Tariff and Customs Code.[14]

The Office of the Solicitor General (OSG) filed a motion to dismiss.[15] The OSG claimed that the remedy of declaratory relief is inapplicable because an assessment is not a proper subject of such petition. It further alleged that there are administrative remedies which were available to CJH.

In an Order[16] dated 28 June 2005, the RTC dropped the City of Baguio as a party to the case. The remaining parties were required to submit their respective memoranda. On 14 October 2005, the RTC rendered its assailed order.[17] It held that the decision in G.R. No. 119775 applies retroactively because the tax exemption granted by Proclamation No. 420 is null and void from the beginning. The RTC also ruled that the petition for declaratory relief is not the appropriate remedy. A judgment of the court cannot be the proper subject of a petition for declaratory relief; the enumeration in Rule 64 is exclusive. Moreover, the RTC held that Commonwealth Act No. 55 (CA No. 55) which proscribes the use of declaratory relief in cases where a taxpayer questions his tax liability is still in force and effect.

CJH filed a motion for reconsideration but the RTC denied it.[18] Hence this petition, which, as earlier stated, was filed directly to this Court, raising as it does only pure questions of law.

There are two issues raised in this petition, one procedural and the other substantive. First, is the remedy of declaratory relief proper in this case? Second, can the decision in G.R. No. 119775 be applied retroactively?

The requisites for a petition for declaratory relief to prosper are: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[19]

CJH alleges that CA No. 55[20] has already been repealed by the Rules of Court; thus, the remedy of declaratory relief against the assessment made by the BOC is proper. It cited the commentaries of Moran allegedly to the effect that declaratory relief lies against assessments made by the BIR and BOC. Yet in *National Dental Supply Co. v. Meer*,[21] this Court held that:

> From the opinion of the former Chief Justice Moran may be deduced that the failure to incorporate the above proviso [CA No. 55] in section 1, rule 66, [now Rule 64] is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court, which is the sole arbiter to determine whether a case is meritorious or not. And even if it be desired to incorporate it in rule 66, it is doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of said proviso is **substantive** and not adjective, its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer or of the Government. With the adoption of said proviso, our law-making body has asserted its policy on the matter, which is to prohibit a taxpayer to question his liability for the payment of any tax that may be collected by the Bureau of Internal Revenue. As this Court well said, quoting from several American cases, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes..." "The power of taxation being legislative, all incidents are within the control of the Legislature." In other words, it is our considered opinion that the proviso contained in Commonwealth Act No. 55 is still in full force and effect and bars the plaintiff from filing the present action.[22] (Emphasis supplied) (Citations omitted.)

As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts' jurisdiction over petitions for declaratory relief involving tax assessments. The Court cannot repeal, modify or alter an act of the Legislature.

Moreover, the proper subject matter of a declaratory relief is a deed, will, contract, or other written instrument, or the construction or validity of statute or ordinance. [23] CJH hinges its petition on the demand letter or assessment sent to it by the BOC. However, it is really not the demand letter which is the subject matter of the petition. Ultimately, this Court is asked to determine whether the decision of the Court *en banc* in G.R. No. 119775 has a retroactive effect. This approach cannot be countenanced. A petition for declaratory relief cannot properly have a court decision as its subject matter. In *Tanda v. Aldaya,*[24] we ruled that:

> x x x [A] court decision cannot be interpreted as included within the purview of the words "other written instrument," as contended by