

## FIRST DIVISION

[ G.R. No. 163445, December 18, 2007 ]

**ASIA INTERNATIONAL AUCTIONEERS, INC. AND SUBIC BAY MOTORS CORPORATION, PETITIONERS, VS. HON. GUILLERMO L. PARAYNO, JR., IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR), THE REGIONAL DIRECTOR, BIR, REGION III, THE REVENUE DISTRICT OFFICER, BIR, SPECIAL ECONOMIC ZONE, AND OFFICE OF THE SOLICITOR GENERAL, RESPONDENTS.**

### D E C I S I O N

**PUNO, CJ.:**

At bar is a petition for review on certiorari seeking the reversal of the decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 79329 declaring the Regional Trial Court (RTC) of Olongapo City, Branch 74, without jurisdiction over Civil Case No. 275-0-2003.

The facts are undisputed.

Congress enacted Republic Act (R.A.) No. 7227 creating the Subic Special Economic Zone (SSEZ) and extending a number of economic or tax incentives therein. Section 12 of the law provides:

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the [SSEZ] shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

(b) The [SSEZ] shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the [SSEZ], as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. **However, exportation or removal of goods from the territory of the [SSEZ] to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;**

(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the [SSEZ]. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprise within the [SSEZ] shall be remitted to the National Government, one percent (1%) each to the local

government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all business and enterprise within the [SSEZ] to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the [SSEZ], the same shall be resolved in favor of the latter;

(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and future shall be allowed and maintained in the [SSEZ]; (*emphasis supplied*)

On January 24, 1995, then Secretary of Finance Roberto F. De Ocampo, through the recommendation of then Commissioner of Internal Revenue (CIR) Liwayway Vinzons-Chato, issued Revenue Regulations [Rev. Reg.] No. 1-95,<sup>[2]</sup> providing the "Rules and Regulations to Implement the Tax Incentives Provisions Under Paragraphs (b) and (c) of Section 12, [R.A.] No. 7227, [o]therwise known as the Bases Conversion and Development Act of 1992." Subsequently, Rev. Reg. No. 12-97<sup>[3]</sup> was issued providing for the "Regulations Implementing Sections 12(c) and 15 of [R.A.] No. 7227 and Sections 24(b) and (c) of [R.A.] No. 7916 Allocating Two Percent (2%) of the Gross Income Earned by All Businesses and Enterprises Within the Subic, Clark, John Hay, Poro Point Special Economic Zones and other Special Economic Zones under PEZA." On September 27, 1999, Rev. Reg. No. 16-99<sup>[4]</sup> was issued "Amending [RR] No. 1-95, as amended, and other related Rules and Regulations to Implement the Provisions of paragraphs (b) and (c) of Section 12 of [R.A.] No. 7227, otherwise known as the 'Bases Conversion and Development Act of 1992' Relative to the Tax Incentives Granted to Enterprises Registered in the Subic Special Economic and Freeport Zone."

On June 3, 2003, then CIR Guillermo L. Parayno, Jr. issued Revenue Memorandum Circular (RMC) No. 31-2003 setting the "Uniform Guidelines on the Taxation of Imported Motor Vehicles through the Subic Free Port Zone and Other Freeport Zones that are Sold at Public Auction." The assailed portions of the RMC read:

II. Tax treatments on the transactions involved in the importation of motor vehicles through the SSEFZ and other legislated Freeport zones and subsequent sale thereof through public auction.— Pursuant to existing revenue issuances, the following are the uniform tax treatments that are to be adopted on the different transactions involved in the importation of motor vehicles through the SSEFZ and other legislated Freeport zones that are subsequently sold through public auction:

A. Importation of motor vehicles into the freeport zones

1. Motor vehicles that are imported into the Freeport zones for exclusive use within the zones are, as a general rule, exempt from customs duties, taxes and other charges,

provided that the importer-consignee is a registered enterprise within such freeport zone. However, should these motor vehicles be brought out into the customs territory without returning to the freeport zones, the customs duties, taxes and other charges shall be paid to the BOC before release thereof from its custody.

x x x

3. For imported motor vehicles that are imported by persons that are not duly registered enterprises of the freeport zones, or that the same are intended for public auction within the freeport zones, the importer-consignee/auctioneer shall pay the value-added tax (VAT) and excise tax to the BOC before the registration thereof under its name with the LTO and/or the conduct of the public auction.

#### B. Subsequent sale/public auction of the motor vehicles

1. Scenario One – The public auction is conducted by the consignee of the imported motor vehicles within the freeport zone

x x x

1.2. In case the consignee-auctioneer is a registered enterprise and/or locator not entitled to the preferential tax treatment or if the same is entitled from such incentive but its total income from the customs territory exceeds 30% of its entire income derived from the customs territory and the freeport zone, the income derived from the public auction shall be subjected to the regular internal revenue taxes imposed by the Tax Code.

x x x

1.4. In the event that the winning bidder shall bring the motor vehicles into the customs territory, the winning bidder shall be deemed the importer thereof and shall be liable to pay the VAT and excise tax, if applicable, based on the winning bid price. However, in cases where the consignee-auctioneer has already paid the VAT and excise tax on the motor vehicles before the registration thereof with LTO and the conduct of public auction, the additional VAT and excise tax shall be paid by winning bidder resulting from the difference between the winning bid price and the value used by the consignee-auctioneer in payment of such taxes. For excise tax purposes, in case the winning bid price is lower than the total costs to import, reconditioning/rehabilitation of the motor vehicles, and other administrative and selling expenses,

the basis for the computation of the excise tax shall be the total costs plus ten percent (10%) thereof. The additional VAT and excise taxes shall be paid to the BIR before the auctioned motor vehicles are registered with the LTO.

1.5 In case the services of a professional auctioneer is employed for the public auction, the final withholding tax of 25%, in case he/she is a non-resident citizen or alien, or the expanded withholding tax of 20%, in case he/she is a resident citizen or alien, shall be withheld by the consignee-auctioneer from the amount of consideration to be paid to the professional auctioneer and shall be remitted accordingly to the BIR.

This was later amended by RMC No. 32-2003,<sup>[5]</sup> to wit:

II. The imported motor vehicles after its release from Customs custody are sold through public auction/negotiated sale by the consignee within or outside of the Freeport Zone:

A. The gross income earned by the consignee-seller from the public auction/negotiated sale of the imported vehicles shall be subject to the preferential tax rate of five percent (5%) in lieu of the internal revenue taxes imposed by the National Internal Revenue Code of 1997, provided that the following conditions are present:

1. That the consignee-seller is a duly registered enterprise entitled to such preferential tax rate as well as a registered taxpayer with the Bureau of Internal Revenue (BIR).
2. That the total income generated by the consignee-seller from sources within the customs territory does not exceed thirty percent (30%) of the total income derived from all sources.

B. In case the consignee-seller is a registered enterprise and/or locator not entitled to the preferential tax treatment or if the same is entitled from such incentive but its total income from the customs territory exceeds thirty percent (30%) of its entire income derived from the customs territory and the freeport zone, the sales or income derived from the public auction/negotiated sale shall be subjected to the regular internal revenue taxes imposed by the Tax Code. The consignee-seller shall also observe the compliance requirements prescribed by the Tax Code. When public auction or negotiated sale is conducted within or outside of the freeport zone, the following tax treatment shall be observed:

1. Value Added Tax (VAT)/ Percentage Tax (PT) - VAT or PT shall be imposed on every public auction or negotiated sale.
2. Excise Tax - The imposition of excise tax on public auction or negotiated sale shall be held in abeyance pending verification that the importer's selling price used as a basis by the Bureau of Customs in computing the excise tax is correctly determined.

Petitioners Asia International Auctioneers, Inc. (AIAI) and Subic Bay Motors Corporation are corporations organized under Philippine laws with principal place of business within the SSEZ. They are engaged in the importation of mainly secondhand or used motor vehicles and heavy transportation or construction equipment which they sell to the public through auction.

Petitioners filed a complaint before the RTC of Olongapo City, praying for the nullification of RMC No. 31-2003 for being unconstitutional and an *ultra vires* act. The complaint was docketed as Civil Case No. 275-0-2003 and raffled to Branch 74. Subsequently, petitioners filed their "First Amended Complaint to Declare Void, Ultra Vires, and Unconstitutional [RMC] No. 31-2003 dated June 3, 2003 and [RMC] No. 32-2003 dated June 5, 2003, with Application for a Writ of Temporary Restraining Order and Preliminary Injunction"<sup>[6]</sup> to enjoin respondents from implementing the questioned RMCs while the case is pending. Particularly, they question paragraphs II(A)(1) and (3), II(B)(1.2), (1.4) and (1.5) of RMC No. 31-2003 and paragraphs II(A)(2) and (B) of RMC No. 32-2003. Before a responsive pleading was filed, petitioners filed their Second Amended Complaint<sup>[7]</sup> to include Rev. Reg. Nos. 1-95, 12-97 and 16-99 dated January 24, 1995, August 7, 1997 and September 27, 1999, respectively, which allegedly contain some identical provisions as the questioned RMCs, but without changing the cause of action in their First Amended Complaint.

The Office of the Solicitor General (OSG) submitted its "Comment (In Opposition to the Application for Issuance of a Writ of Preliminary Injunction)."<sup>[8]</sup> Respondents CIR, Regional Director and Revenue District Officer submitted their joint "Opposition (To The Prayer for Preliminary Injunction and/or Temporary Restraining Order by Petitioners)."<sup>[9]</sup>

Then Secretary of Finance Jose Isidro N. Camacho filed a Motion to Dismiss the case against him, alleging that he is not a party to the suit and petitioners have no cause of action against him.<sup>[10]</sup> Respondents CIR, BIR Regional Director and BIR Revenue District Officer also filed their joint Motion to Dismiss on the grounds that "[t]he trial court has no jurisdiction over the subject matter of the complaint" and "[a] condition precedent, that is, exhaustion of administrative remedies, has not been complied with."<sup>[11]</sup> Petitioners filed their "Motion to Expunge from the Records the Respondents['] Motion to Dismiss"<sup>[12]</sup> for allegedly failing to comply with Section 4, Rule 15 of the Rules of Court. To this, the respondents filed their Opposition.<sup>[13]</sup>

Meantime, BIR Revenue District Officer Rey Asterio L. Tambis sent a 10-Day Preliminary Notice<sup>[14]</sup> to the president of petitioner AIAI for unpaid VAT on auction