

SECOND DIVISION

[G.R. No. 108461, October 21, 1996]

**PHILIPPINE INTERNATIONAL TRADING CORPORATION,
PETITIONERS, VS. HON PRESIDING JUDGE ZOSIMO Z. ANGELES,
BRANCH 58, RTC, MAKATI; REMINGTON INDUSTRIAL SALES
CORPORATION; AND FIRESTONE CERAMIC, INC., RESPONDENTS.**

D E C I S I O N

TORRES, JR., J.:

The PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC, for brevity) filed this Petition for Review on Certiorari, seeking the reversal of the Decision dated January 4, 1993 of public respondent Hon. Zosimo Z. Angeles. Presiding Judge of the Regional Trial Court of Makati, Branch 58, in civil Case No.92-158 entitled Remington Industrial Sales Corporation, et. al. vs. Philippine Industrial Trading Corporation.

The said decision upheld the Petition for Prohibition and Mandamus of REMINGTON INDUSTRIAL SALES CORPORATION (Remington, for brevity) and FIRESTONE CERAMICS, INC. (Firestone, for brevity), and, in the process, declared as null and void and unconstitutional, PITC's Administrative Order No. SOCPEC 89-08-01 and its appurtenant regulations. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of Petitioner and Intervenor and against the Respondent, as follows:

1) Enjoining the further implementation by the respondent of the following issuances relative to the applications for importation of products from the People's Republic of China, to wit:

a) Administrative Order No. SOCPEC 89-08-01 dated August 30, 1989 (Annex A, Amended petition);

b) Prescribed Export Undertaking Form (Annex B, Id.);

c) Prescribed Importer-Exporter Agreement Form for non-exporter-importer (Annex C, Id.);

d) Memorandum dated April 16, 1990 relative to amendments of Administrative Order NO. SOCPEC 89-08-01 (Annex D, Id.);

e) Memorandum dated May 6, 1991 relative to Revised Schedule of Fees for the processing of import applications (Annexes E, E-1., Id.);

f) Rules and Regulations relative to liquidation of unfulfilled Undertakings

and expired export credits (Annex Z, Supplemental Petition),

the foregoing being all null and void and unconstitutional; and,

2) Commanding respondent to approve forthwith all the pending applications of, and all those that may hereafter be filed by, the petitioner and the Intervenor, free from and without the requirements prescribed in a the above-mentioned issuance.

IT IS SO ORDERED."

The controversy springs from the issuance by the PITC of Administrative Order No. SOCPEC 89-08-01,^[1] under which, applications to the PITC for importation from the People's Republic of China (PROC. for brevity) must be accompanied by a viable and confirmed Export Program of Philippine Products to PROC carried out by the importer himself or through a tie-up with a legitimate importer in an amount equivalent to the value of the importation from PROC being applied for, or, simply, at one is to one ratio.

Pertinent provisions of the questioned administrative order read:

3. COUNTERPART EXPORTS TO PROC

In addition to existing requirements for the processing of import application for goods and commodities originating from PROC, it is declared that:

3.1 All applications covered by these rules must be accompanied by a viable and confirmed EXPORT PROGRAM of Philippine products to PROC in an amount equivalent to the value of the importation from PROC being applied for. Such export program must be carried out and completed within six (6) months from date of approval of the Import Application by PITC. PITC shall reject/deny any application for importation from PROC without the accompanying export program mentioned above.

3.2 The EXPORT PROGRAM may be carried out by any of the following:

a. By the IMPORTER himself if he has the capabilities and facilities to carry out the export of Philippine products to PROC in his own name; or

b. Through a tie-up between the IMPORTER and a legitimate exporter (of Philippine products) who is willing to carry out the export commitments of the IMPORTER under these rules. The tie-up shall not make the IMPORTER the exporter of the goods but shall merely ensure that the importation sought to be approved is matched one-to-one (1:1) in value with a corresponding export of Philippine Products to PROC.^[2]

3.3 EXPORT PROGRAM DOCUMENTS which are to be submitted by the importer together with his Import Application are as follows:

a) Firm Contract, Sales Invoice or Letter of Credit.

b) Export Performance Guarantee (See Article 4 hereof).

c) IMPORTER-EXPORTER AGREEMENT for non-exporter IMPORTER (PITC Form No. M-1006). This form should be used if IMPORTER has a tie-up with an exporter for the export of Philippine Products to PROC.

4. EXPORT GUARANTEE

To ensure that the export commitments of the IMPORTER are carried out in accordance with these rules, all IMPORTERS concerned are required to submit an EXPORT PERFORMANCE GUARANTEE (the "Guarantee") at the time of filing of the Import Application. The amount of the guarantee shall be as follows:

For essential commodities: 15% of the value of the imports applied for.

For other commodities: 50% of the value of the imports applied for.

4.1 The guarantee may be in the form of (i) a non-interest bearing cash deposit; (ii) Bank hold-out in favor of PITC (PITC Form No. M-1007) or (iii) a Domestic Letter of Credit (with all bank opening charges for account of Importer) opened in favor of PITC as beneficiary.

4.2 The guarantee shall be made in favor of PITC and will be automatically forfeited in favor of PITC, fully or partially, if the required export program is not completed by the importer within six (6) months from date of approval of the Import Application.

4.3 Within the six (6) months period above stated, the IMPORTER is entitled to a (i) refund of the cash deposited without interest; (ii) cancellation of the Bank holdout or (iii) Cancellation of the Domestic Letter of Credit upon showing that he has completed the export commitment pertaining to his importation and provided further that the following documents are submitted to PITC:

a) Final Sales Invoice

b) Bill of lading or Airway bill

c) Bank Certificate of Inward remittance

d) PITC EXPORT APPLICATION FOR NO. M-1005

5. MISCELLANEOUS

5.1 All other requirements for importations of goods and commodities from PROC must be complied with in addition to the above.

5.2 PITC shall have the right to disapprove any and all import application not in accordance with the rules and regulations herein prescribed.

5.3 Should the IMPORTER or any of his duly authorized representatives

make any false statements or fraudulent misrepresentations in the Import/Export Application, or falsify, forge or simulate any document required under these rules and regulations, PITC is authorized to reject all pending and future import/export applications of said IMPORTER and/or disqualify said IMPORTER and/or disqualify said IMPORTER from doing any business with SOCPEC through PITC."

Desiring to make importations from PROC, private respondents Remington and Firestone, both domestic corporations, organized and existing under Philippines laws, individually applied for authority to import from PROC with the petitioner, They were granted such authority after satisfying the requirements for importers, and after they executed respective undertakings to balance their importations from PROC with corresponding export of Philippine products to PROC.

Private respondent Remington was allowed to import tools, machineries and other similar goods. Firestones, on the other hand, imported *Calcine Vauxite*, which it used for the manufacture of fire bricks, one of its products.

Subsequently, for failing to comply with their undertakings to submit export credits equivalent to the value of their importations, further import applications were withheld by petitioner PITC from private respondents, such that the latter both barred from importing goods from PROC.^[3]

Consequently, Remington filed a Petition for Prohibition and Mandamus, with prayer for issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction on January 20, 1992, against PITC in the RTC Makati Branch 58.^[4] The court issued a Temporary Restraining Order on January 21, 1992, ordering PITC to cease from exercising any power to process applications of goods from PROC.^[5] Hearings on the application for writ of preliminary injunction ensued.

Private respondents Firestones was allowed to intervene in the petition on July 2, 1992,^[6] thus joining Remington in the latter's charges against PITC. It specifically asserts that the questioned Administrative Order is an undue restrictions of trade, and hence, unconstitutional.

Upon trial, it was agreed that the evidence adduced upon the hearing on the Preliminary Injunction was sufficient to completely adjudicate the case, thus, the parties deemed it proper that the entire case be submitted for decision upon the evidence so far presented.

The court rendered its Decision^[7] on January 4, 1992. The court ruled that PITC's authority to process and approve applications for imports from SOCPEC and to issue rules and regulations pursuant to LOI 444 and P.D. No. 1071, has already been repealed by EO No. 133, issued on February 27, 1987 by President Aquino.

The court observed:

"Given such obliteration and/or withdrawal of what used to be PITC's regulatory authority under the Special provisions embodied in LOI 444 from the enumeration of powers that it could exercise effective February 27, 1987 in virtue of Section 16 (d), EO No. 133, it may now be

successfully argued that the PITC can no longer exercise such specific regulatory power in question conformably with the legal precept "*expresio unius est exclusio alterius*."

Moreover, the court continued, none of the Trade protocols of 1989, 1990 or 1991, has empowered the PITC, expressly or impliedly to formulate or promulgate the assailed Administrative Order. This fact, makes the continued exercise by PITC of the regulatory powers in question unworthy of judicial approval. Otherwise, it would be sanctioning an undue exercise of legislative power vested solely in the Congress of the Philippines by Section 1, Article VII of the 1987 Philippine Constitution.

The lower court stated that the subject Administrative Order and other similar issuances by PITC suffer from serious constitutional infirmity, having been promulgated in pursuance of an international agreement (the Memorandum of Agreement between the Philippine and PROC), which has not been concurred in by at least 2/3 of all the members of the Philippine Senate as required by Article VII, Section 21, of the 1987 Constitution, and therefore, null and void.

"Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

Furthermore, the subject Administrative Order was issued in restraint of trade, in violation of Sections 1 and 19, Article XII of the 1987 Constitution, which reads:

"Section 1. The goals of the national economy are a more equitable distribution of opportunities, income and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and, an expanding productivity as the key to raising the equality of life for all, especially the underprivileged."

"Section 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combination is restraint of trade or unfair competition shall be allowed."

Lastly, the court declared the Administrative Order to be null and void, since the same was not published, contrary to Article 2 of the New Civil Code which provides, that:

"Article 2. Laws shall take effect fifteen (15) days following the completion of their publication in the Official Gazette, unless the law otherwise provides. xxx"

Petitioner now comes to us on a Petition for Review on Certiorari,^[8] questioning the court's decision particularly on the propriety of the lower court's declarations on the validity of Administrative Order No. 89-08-01. The Court directed the respondents to file their respective Comments.

Subsequent events transpired, however, which affect to some extent, the submissions of the parties to the present petition.

Following President Fidel V. Ramos' trip to Beijing, People's Republic of China (PROC), from April 25 to 30, 1993, a new trade agreement was entered into between the Philippines and PROC, encouraging liberalization of trade between the