

PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) AND PHILIPPINE ECONOMIC ZONE AUTHORITY BOARD, REPRESENTED BY ITS DIRECTOR GENERAL LILIA B. DE LIMA, PETITIONERS, VS. PEARL CITY MANUFAC...

G.R. No. 168668. December 16, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court praying for the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 00352 dated June 22, 2005. The challenged Decision of the CA reversed and set aside the Decision[2] dated September 7, 2004 and Order[3] issued on January 20, 2005 of the Office of the President (OP) in O.P. Case No. 04-G-324.

The factual and procedural antecedents, as summarized by the CA, are as follows:

Petitioner Corporation [herein respondent Pearl City Manufacturing Corporation] is a PEZA-registered Ecozone Export Enterprise located at the Mactan Economic Zone (MEZ) I in Lapu-Lapu City, [province of Cebu] engaged in the business of recycling and processing, for export, of used clothing into wool, fiber, cotton fiber, polyester fiber, useable clothing and industrial rags. Individual petitioners are the employees of the petitioner Corporation.

Sometime in March 2004, petitioner Corporation, along with two (2) other PEZA-registered companies importing used clothing, was informed of a physical inventory to be conducted by the PEZA officers in their respective zones on their businesses.

After the completion of the physical inventory on the petitioner Corporation, PEZA officers discovered that it had an unaccounted importation of 8,259,645 kilograms of used clothing for the period of fifteen (15) months covering January 2003 up to March 2004.

Petitioner Corporation was then instructed to submit its explanation regarding the said unaccounted shortage in its import-export liquidation. After submitting the required explanation, petitioner Corporation was subjected to a special audit conducted by PEZA to determine the amount of wastage generated by the company.

On the basis of the results of the physical inventory and the special audit conducted on the petitioner Corporation, respondent [herein co-petitioner] PEZA Board passed a resolution [Resolution No. 04-236] canceling the PEZA Registration of petitioner Corporation as an Ecozone Export Enterprise at MEZ I.

An administrative appeal was filed by the petitioners to the Office of the President from the resolution canceling its registration. The case on appeal was docketed as O.P. Case No. 04-G-324. On September 7, 2004, the Office of the President rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE premises considered, the Resolution sought to be revoked on appeal is hereby **AFFIRMED** in toto.[4]

Herein respondent, Pearl City Manufacturing Corporation (PCMC), filed a Motion for Reconsideration, but the OP denied it in its Order dated January 20, 2005.

Aggrieved, PCMC filed a petition for review with the CA assailing the above-mentioned Decision and Order of the OP.

On June 22, 2005, the CA rendered a Decision disposing as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The Decision of the Office of the President dated September 7, 2004 in O.P. Case No. 04-G-324 and the Order dated January 20, 2005 are hereby REVERSED and SET ASIDE. The Board Resolution No. 04-236 of the Philippine Economic Zone Authority (PEZA) dated July 13, 2004 canceling petitioner corporation's PEZA Registration as an Ecozone Export Enterprise at MEZ I is hereby DECLARED NULL AND VOID.

The respondents are further ORDERED to REINSTATE all the Ecozone privileges of the petitioner Corporation.

SO ORDERED.[5]

Hence, the instant petition raising the following issues:

- WHETHER OR NOT RESPONDENT PCMC WAS AFFORDED DUE PROCESS.
- WHETHER OR NOT THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT PEZA BOARD RESOLUTION NO. 04-236 AND THE OP DECISION AND ORDER.
- WHETHER OR NOT THE CANCELLATION OF RESPONDENT PCMC'S PEZA ACCREDITATION IS PROPER.[6]

The Court finds the petition meritorious.

The Court agrees with petitioners' contention in the first issue raised that respondent PCMC was afforded due process.

On May 11, 2004, Jimmy Sy, the General Manager of PCMC sent a letter[7] to the Director General of PEZA explaining the discrepancy in its import and export liquidation. Subsequently, on May 25, 2004, Sy wrote to the Deputy Director General for Operations of the PEZA explaining PCMC's unaccounted shortage of imported used clothing which amounted to 8,259,645 kilograms between January 2003 and March 2004.[8]

Thereafter, Sy executed an Affidavit[9] dated May 26, 2004, explaining the discrepancy and shortages in its import and export accounts. This affidavit was submitted to the PEZA, the receipt of which was duly acknowledged by the PEZA Deputy Director General for Operations in her letter dated June 11, 2004 addressed to Sy.

On June 14, 2003, Sy again wrote a letter[10] to the PEZA Deputy Director General for Operations reiterating the explanations they have earlier submitted and praying that their import permits be approved pending investigation of their unaccounted imported materials.

In a letter[11] dated July 5, 2004, the law firm representing PCMC wrote a letter addressed to the Group Manager, Legal Services Group of PEZA explaining in detail its supposed unaccounted shortage in its business of recycling used clothing.

In the course of explaining its position, PCMC even secured letters,[12] joint affidavits,[13] and certifications[14]

from its plant manager and various persons to show that the supposed discrepancy in its import-export liquidations found by PEZA investigators represented part of the waste materials generated in its recycling business.

It is settled that in administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[15] The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[16] In the recent case of *Pagayanan R. Hadji-Sirad v. Civil Service Commission*,[17] the Court had the opportunity to reiterate the following pronouncements, to wit:

In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[18]

In the present case, since PCMC was properly informed of the supposed discrepancy in its import and export liquidations, that it was given ample opportunity by the PEZA management to be heard or to explain its side in relation to its unaccounted imported materials and that it was subsequently informed of the decision of the PEZA Board to cancel its registration on the basis of its assessment of the evidence presented or lack thereof, petitioners cannot claim that they were denied their right to due process of law.

The Court cannot subscribe to the pronouncement of the CA that there should have been interrogations or inquiries conducted by the PEZA Board to give PCMC the opportunity to defend itself from any charge directed against it.

The Court agrees with the petitioner's averment that the power and authority to conduct inquiries is lodged with the PEZA Director General and not with the PEZA Board. Thus, Section 14(g) of Republic Act (R.A.) No. 7916 provides:

SEC. 14. Powers and Functions of the Director General. - The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

x x x x

g) To acquire jurisdiction, as he may deem proper, over the protests, complaints and claims of the residents and enterprises in the ECOZONE concerning administrative matters;

In consonance with the above-quoted authority, the PEZA Director General is also empowered, under Section 14(h) of the same law, to recommend to the PEZA Board the grant, approval, refusal, amendment or termination

of the ECOZONE franchises, licenses, permits, contracts and agreements in accordance with the policies of the said Board.

It necessarily follows from the foregoing that the primary authority to conduct inquiries and fact-finding investigations is bestowed upon the office of the PEZA Director General simply because no complaint, protest or claim can be properly addressed, and neither can any reasonable recommendation to the PEZA Board be made by the PEZA Director General without conducting any such inquiry or fact-finding. While nothing prohibits the PEZA Board to conduct its own inquiry on matters brought before it, it does not mean that the absence of such inquiry by the Board is a denial of due process on the part of the entity being investigated. In the present case, however, such inquiry, if conducted, would be a superfluity considering that a physical inventory and a full-blown audit was already made by a special team from the PEZA Head Office and the MEZ between March 2004 and June 2004. During the said inventory and audit, PCMC was given sufficient opportunity to explain whether it really incurred any shortage or whether the materials it imported were properly disposed of or withdrawn from the MEZ. The PEZA Board did not arbitrarily arrive at its decision to cancel the registration of PCMC. The results of the inventory and audit are precisely the bases upon which the cancellation was made.

Stated differently, the audit and inventory conducted under the direction and authority of the PEZA Director General are sufficient for purposes of complying with the requirements of procedural due process. Conversely, the absence of formal proceedings conducted before the PEZA Board does not mean that the requirements of procedural due process were not complied with.

The Court also finds it apropos to reiterate the well-settled rule that in administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[19] In fact, it is well settled that, in administrative cases, the requirement of notice and hearing does not connote full adversarial or trial type proceedings.[20]

Moreover, it is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies.[21] In the present case, the various letters of explanation, as well as certifications, joint affidavits and other documents, submitted by the PCMC constitute evidence to support its contentions and are sufficient bases for the PEZA Board to arrive at a sound decision with respect to the present case.

In any event, the Court agrees with petitioners that any procedural defect in the proceedings before the PEZA Board was cured when the PCMC appealed PEZA Board Resolution No. 04-236 before the OP. Petitioners were also able to move for the reconsideration of the adverse ruling of the OP. In *Autencio v. Mañara*, [22] the Court ruled that where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured. Likewise, in *Gonzales v. Civil Service Commission*, [23] the Court ruled that any seeming defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon.

Respondents insist that the question of whether the PCMC was denied its right to due process of law is a question of fact which is not proper in a petition for review on certiorari.

It is already a well-settled rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals by virtue of Rule 45 of the Revised Rules of Court is limited to reviewing errors of law. Findings of fact of the CA are conclusive upon this Court. There are, however, recognized exceptions to the foregoing rule, namely: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4)

when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when, in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

The present case falls under the seventh exception considering that the PEZA Board and the OP, on one hand, and the CA, on the other, arrived at conflicting findings of fact. This necessitates a review of the evidence on record which leads the Court to the conclusion, as earlier discussed, that the OP did not err in ruling that the PCMC was not denied its right to due process of law.

Anent the second issue raised, the Court agrees with the petitioners' averment that the Resolution of the PEZA Board, which was affirmed by the Decision of the OP, is supported by substantial evidence.

Petitioners correctly argue that the CA erred in holding that the PCMC was able to sufficiently explain the adverse findings of the PEZA in the audit and physical inventory that the PEZA conducted. The Court notes that the CA did not specify the reasons why it made such pronouncement. On the other hand, it is clear from the letter[25] dated June 11, 2004 of the PEZA Deputy Director General for Operations addressed to Sy that the PEZA finds Sy's explanation of PCMC's shortage as inadequate, specifying therein the grounds for such finding. In the same manner, the Group Manager of the Legal Services Group of PEZA in a subsequent letter[26] to Sy dated June 17, 2004, reiterated the findings of the PEZA Deputy Director General for Operations. He also specified the reasons why the PEZA Audit Team found the explanations of the PCMC's Plant Manager as unsatisfactory. Despite these letters directing the PCMC to submit all essential documents to substantiate its claims, PCMC still failed to do so.

In this regard, the Court quotes with approval the disquisition made by the OP in resolving petitioners' Motion for Reconsideration of the Decision of the OP, dated September 7, 2004, to wit:

In answer to the many requests of PEZA to submit affidavits and documents in support of its position, Petitioner submitted inadequate explanations. Its statements attributing the unaccountable shortages to an honest mistake [where the clerk assigned to record its importations in kilograms vis-a-vis pounds was new in his job and relatively inexperienced] and that it could not produce the required importation records because these were destroyed when heavy rains drenched their office, are at best, self-serving. Thus, the failure on the part of Petitioner to account for the importation shortages, as well as the proper disposal of waste, constitutes prima facie proof that the goods or merchandise were illegally sent out of the restricted areas.[27]

Settled is the rule that Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency.[28] Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence.[29] Based on the foregoing discussions, the Court finds that the PEZA Board and the OP were correct in ruling that, based on the evidence presented, or the insufficiency thereof, the PCMC failed to account for the unexplained shortage in its imported materials between January 2003 and March 2004.

Lastly, the Court agrees with petitioners that the cancellation of the PCMC's registration as an ECOZONE enterprise is warranted by the law. Section 8(c), Rule XXV, Part XI of the Rules and Regulations to Implement R.A. No. 7916 provides, thus:

C. Cancellation/Revocation - Registration, permit and/or franchise of an ECOZONE enterprise may be

canceled for any of the following grounds:

- a. Failure to maintain the qualifications of registration/permit/franchise as required;
- b. Violation of any pertinent provisions of the Act/Code and/or Decree; and
- c. Violation of any of these Rules and Regulations, the corresponding implementing memoranda or circulars or any of the general and specific terms and conditions of the Registration Agreement between the PEZA and the ECOZONE enterprise or violation of the terms and conditions of the permit/franchise issued by PEZA. (emphasis supplied)

x x x x

In this respect, it is worthy to note that on May 18, 1999, the PEZA Board issued Resolution No. 99-134 imposing a fine of P377,890.00 on the PCMC for having illegally withdrawn from its factory in MEZ 102 bales of used clothing, weighing approximately 5,000 kilograms, in violation of the provisions and implementing rules and regulations of R.A. No. 7916, otherwise known as the Special Economic Zone Act of 1995. The Resolution stated that the PCMC violated Section 3, Rule X, Part VI,[30] in relation to Section 8, Rule XXV, Part XI of the Rules and Regulations Implementing R.A. No. 7916. The Resolution also contained a "final warning to the company that a similar violation in the future shall be dealt with most severely and shall constitute a sufficient ground for the automatic cancellation of its registration with [PEZA]."

In the presently assailed PEZA Board Resolution, it is clearly stated therein that the PCMC's PEZA registration was canceled due to its failure to account for the shortage in its imported used clothing; failure to secure the required permits for the withdrawal of goods and merchandise from specified zones; and noncompliance with various EPZA/PEZA rules, procedures and guidelines on the disposition of scraps and/or excess materials, which are in violation of Section 2, Rule XI, Part VI[31] and, again, Section 3, Rule X, Part VI of the same Implementing Rules and Regulations.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is REVERSED and SET ASIDE. The Decision of the Office of the President, dated September 7, 2004, and its Order dated January 20, 2005 in O.P. Case No. 04-G-324, as well as Board Resolution No. 04-236 of the Philippine Economic Zone Authority, dated July 13, 2004, are hereby REINSTATED.

SO ORDERED.

Carpio[*], Corona, (Chairperson), Velasco, Jr., and Del Castillo[**], JJ., concur.

[*] Additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated December 2, 2009.

[**] Additional member per Special Order No. 805 dated December 4, 2009.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Pampio A. Abarintos and Sesinando E. Villon, concurring; rollo, pp. 60-68.

[2] Annex "AA" to Petition for Review on Certiorari, id. at 232-233.

[3] Annex "CC" to Petition for Review on Certiorari, id. at 293-297.

[4] Rollo, pp. 63-64.

- [5] Annex "A" to Petition for Review on Certiorari, id. at 68.
- [6] Rollo, p. 32.
- [7] See Annex "O" to Petition for Review on Certiorari, id. at 129-130.
- [8] See Annex "Q" to Petition for Review on Certiorari, id. at 133-134.
- [9] See Annex "R" to Petition for Review on Certiorari, id. at 135-137.
- [10] Records, Folder No. 1, pp. 31-32.
- [11] See Annex "X" to Petition for Review on Certiorari, rollo, pp. 156-164.
- [12] See Annexes "P," "P-1" and "T" to Petition for Review on Certiorari, id. at 131-132, 143.
- [13] See Annex "V" to Petition for Review on Certiorari, id. at 146-147.
- [14] See Annexes "U" and "U-1" to Petition for Review on Certiorari, id. at 144-145.
- [15] Department of Agrarian Reform v. Samson, G.R. Nos. 161910 and 161930, June 17, 2008, 554 SCRA 500, 509.
- [16] Casimiro v. Tandog, G.R. No. 146137, June 8, 2005, 459 SCRA 624, 631.
- [17] G.R. No. 182267, August 28, 2009.
- [18] Id.
- [19] Atty. Emmanuel Pontejos v. Hon. Aniano A. Desierto and Restituto Aquino, G.R. No. 148600, July 7, 2009.
- [20] Id.
- [21] Bacsasar v. Civil Service Commission, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.
- [22] G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55-56.
- [23] G.R. No. 156253, June 15, 2006, 490 SCRA 741, 746.
- [24] Citibank, N.A. (Formerly First National City Bank) v. Sabeniano, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 409; Herbosa v. Court of Appeals, G.R. No. 119086, January 25, 2002, 374 SCRA 578, 591.
- [25] See Annex "S-1" to Petition for Review on Certiorari, rollo, p. 142.
- [26] See Annex "W-1" to Petition for Review on Certiorari, id. at 155.
- [27] See Order dated January 20, 2005, id. at 296.
- [28] Department of Agrarian Reform v. Samson, supra note 15, at 510-511.
- [29] Id. at 511.
- [30] SEC. 3. Permits - Merchandise or goods may be taken into or brought out of the restricted areas of the ECOZONES only upon prior approval or permit by the PEZA in accordance with its documentation and security procedures. Permits to bring out of the ECOZONES said merchandise or goods must be secured by the Export or Free Trade Enterprise from the PEZA prior to loading or before the release of said merchandise or goods from the factory premises or warehouse of the enterprise. Merchandise or goods brought out of the factory premises or warehouse of the Export or Free Trade Enterprise without the required prior permit from the PEZA shall be

considered as a violation of this Section although the said merchandise or goods are still within or inside the restricted areas or boundaries of the ECOZONE.

[31] SEC. 2. Shortage and Overage - In case of failure to account for shortages on raw material, machineries, equipment, supplies or goods for personal usage, imported tax and duty free pursuant to the Act, the same shall constitute prima facie proof that such goods or merchandise were illegally sent out of the restricted areas of the ECOZONE and/or to the customs territory. In such case, the enterprise concerned shall be imposed the corresponding fines, taxes and duties in accordance with the applicable provisions of these Rules, Customs and Internal Revenue Laws.

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