

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PUREGOLD DUTY FREE, INC., RESPONDENT.

G.R. No. 202789. June 22, 2015

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-202789/>

VELASCO JR., J.:

At bar is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 9, 2012 Decision and July 18, 2012 Resolution of the Court of Tax Appeals (CTA) en banc in CTA EB No. 723 (CTA Case No. 7812). The CTA en banc upheld the November 25, 2010 and January 20, 2011 Resolutions of the CTA Second Division stating that herein respondent Puregold Duty Free, Inc. (Puregold) is entitled to, and properly availed of, the tax amnesty under Republic Act No. (RA) 9399[1] and so is no longer liable for deficiency value-added tax (VAT) and excise tax for its importation of distilled spirits, wines, and cigarettes from January 1998 to May 2004.

As culled from the records, the facts of this case are:

Puregold is engaged in the sale of various consumer goods exclusively within the Clark Special Economic Zone (CSEZ),[2] and operates its store under the authority and jurisdiction of Clark Development Corporation (CDC) and CSEZ.

As an enterprise located within CSEZ and registered with the CDC, Puregold had been issued Certificate of Tax Exemption No. 94-4,[3] later superseded by Certificate of Tax Exemption No. 98-54,[4] which enumerated the tax incentives granted to it, including tax and duty-free importation of goods. The certificates were issued pursuant to Sec. 5 of Executive Order No. (EO) 80,[5] extending to business enterprises operating within the CSEZ all the incentives granted to enterprises within the Subic Special Economic Zone (SSEZ) under RA 7227, otherwise known as the "Bases Conversion and Development Act of 1992."

Notably, Sec. 12 of RA 7227 provides duty-free importations and exemptions of businesses within the SSEZ from local and national taxes.[6] Thus, in accordance with the tax exemption certificates granted to respondent Puregold, it filed its Annual Income Tax Returns and paid the five percent (5%) preferential tax, in lieu of all other national and local taxes for the period of January 1998 to May 2004.[7]

On July 25, 2005, in *Coconut Oil Refiners v. Torre*,[8] however, this Court annulled the adverted Sec. 5 of EO 80, in effect withdrawing the preferential tax treatment heretofore enjoyed by all businesses located in the CSEZ.

On November 7, 2005, then Deputy Commissioner for Special Concerns/OIC-Large Taxpayers Service of the Bureau of Internal Revenue (BIR) Kim Jacinto-Henares issued a Preliminary Assessment Notice regarding unpaid VAT and excise tax on wines, liquors and tobacco products imported by Puregold from January 1998 to May 2004. In due time, Puregold protested the assessment.

Pending the resolution of Puregold's protest, Congress enacted RA 9399,[9] specifically to grant a tax amnesty to business enterprises affected by this Court's rulings in *John Hay People's Coalition v. Lim*[10] and *Coconut Oil*

Refiners. Under RA 9399, availment of the tax amnesty relieves the qualified taxpayers of any civil, criminal and/or administrative liabilities arising from, or incident to, nonpayment of taxes, duties and other charges, viz:

SECTION 1. Grant of Tax Amnesty. - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone [CSEZ] created under Proclamation No. 163, series of 1993 x x x may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of *John Hay People's Coalition v. Lim, et. al.*, G. R. No. 119775 dated 24 October 2003 and *Coconut Oil Refiners Association, Inc. v. Torres, et. al.*, G. R. No. 132527 dated 29 July 2005, by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five Thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, that the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended. (emphasis added)

Sec. 2. Immunities and Privileges. Those who have availed themselves of the tax amnesty and have fully complied with all its conditions shall be relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty granted under Section 1 herein.[11]

On July 27, 2007, Puregold availed itself of the tax amnesty under RA 9399, filing for the purpose the necessary requirements and paying the amnesty tax.[12]

Nonetheless, on October 26, 2007, Puregold received a formal letter of demand from the BIR for the payment of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (P2,780,610,174.51), supposedly representing deficiency VAT and excise taxes on its importations of alcohol and tobacco products from January 1998 to May 2004.

In its response-letter, Puregold, thru counsel, requested the cancellation of the assessment on the ground that it has already availed of the tax amnesty under RA 9399. This notwithstanding, the BIR issued on June 23, 2008 a Final Decision on Disputed Assessment stating that the availment of the tax amnesty under RA 9399 did not relieve Puregold of its liability for deficiency VAT, excise taxes, and inspection fees under Sec. 131(A) of the 1997 National Internal Revenue Code (1997 NIRC).

On July 22, 2008, Puregold filed a Petition for Review with the CTA questioning the timeliness of the assessment and arguing that the doctrines of operative fact and non-retroactivity of rulings bar the Commissioner of Internal Revenue (CIR) from assessing it of deficiency VAT and excise taxes. More importantly, Puregold asserted that, by virtue of its availment of the tax amnesty granted by RA 9399, it has been relieved of any civil, criminal and/or administrative liabilities arising from or incident to non- payment of taxes, duties and other charges.

Answering, the CIR argued that pursuant to Sec. 131(A) of the 1997 NIRC, only importations of distilled spirits, wines, and cigarettes to the freeports in Subic, Cagayan, and Zamboanga, as well as importations by

government-owned duty free shops, are exempt from the payment of VAT and excise taxes.

Following an exchange of motions, the CTA 2[nd] Division issued on November 25, 2010 a Resolution ordering the cancellation of the protested assessment against Puregold in view of its availment of tax amnesty under RA 9399, viz:

In substantiating its compliance with Section 1 of Republic Act No. 9399, petitioner submitted Certificates of Registration/Tax Exemption[2] issued by the Clark Development Corporation, its Amnesty Tax Payment Form[3] and its BIR Tax Payment Deposit Slip[4].

Based on the foregoing, the Court finds that petitioner has sufficiently established its compliance with the requirements provided under R.A. No. 9399.

As to whether or not petitioner's tax liabilities are excluded under R.A. 9399; it is significant to note that what petitioner seeks to cancel in its petition for review and Motion for Early Resolution, is respondent's (CIR) assessment of deficiency excise tax and Value Added Tax (VAT) on imported alcohol and tobacco products.

Clearly, these are not taxes on articles, raw materials, capital goods, equipment and consumer items removed from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. This may be verified in respondent's Formal Letter of Demand where it was stated that the assessment was made against petitioner's importation of wines, liquors and tobacco products. In view thereof, the deficiency tax assessments made against petitioner, which were sought to be cancelled in the instant petition, are not excluded under R.A. No. 9399.

As to respondent's contention that petitioner is not entitled to avail of the tax amnesty provided under R.A. No. 9399 on the basis of Section 131 of the NIRC of 1997, this Court is not persuaded.

The coverage of the tax amnesty is the difference of all national and local taxes that petitioner is liable under the Local Government Code, the Tax Code and other pertinent laws, and the 5% tax that petitioner had previously been liable pursuant to Executive Order (EO) No. 80.

Being liable to VAT and excise taxes on importations of alcohol and cigars under Section 131 of the 1997 Tax Code is not a condition to be excluded from the tax amnesty. Contrarily, being liable to such taxes is obviously contemplated by RA No. 9399 thru the phrase "all national and local tax impositions under relevant tax laws, rules and regulations." If petitioner is liable to VAT and excise taxes pursuant to the provision of Section 131 (A) of the 1997 Tax Code, then such amount of taxes will be used in determining the difference mandated by R.A. 9399, which in turn, is the subject of the latter law. (emphasis added)

On December 15, 2010, the CIR moved for reconsideration reiterating her previous argument that the national and local impositions mentioned in RA 9399 do not cover the deficiency taxes being assessed against Puregold.

By Resolution of January 20, 2011, the CTA 2[nd] Division denied CIR's Motion for Reconsideration, holding:

After a close scrutiny of the arguments raised by respondent (CIR), this Court finds that the same contentions were already raised in her "Comment (Re: Petitioner's Manifestation of Compliance)" filed on November 15, 2010 and which have already been sufficiently addressed in the assailed Resolution dated November 25, 2010.

To reiterate, the liability for VAT and excise taxes on importations of alcohol and cigars under Section 131 of the NIRC of 1997, as amended, is contemplated under R.A. 9399 when it provides that "registered business enterprises operation prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993, x x x may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interest and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court

in the cases of John Hay Peoples Coalition vs. Lim, et al., G.R. No. 119775 dated 23 October 2003 and Coconut Oil Refiners Association, Inc. vs. Torres, et al. G.R. No. 132527 dated 29 July 2005.

Petitioner (Puregold) incurred liability for the assessed deficiency VAT, excise taxes and inspection fees when its tax incentives was in effect removed by the Supreme Court when it ruled in the case of Coconut Oil Refiners Association, Inc. vs. Torres, that the incentives provided under R.A. No. 7227 extends only to business enterprises registered within the Subic Special Economic Zone (SSEZ). Since, petitioner's tax liabilities accrued because of the said ruling, it is clear that petitioner's tax liabilities fall within the coverage of R.A. No. 9399.

On February 25, 2011, the CIR filed a Petition for Review with the CTA en banc assailing the adverted Resolutions of the CTA 2nd Division, predicated her recourse on the same arguments earlier presented. On May 9, 2012, the CTA en banc promulgated its Decision denying the CIR's petition, as follows:

After a careful review of the records and arguments raised by the petitioner, we agree with respondent's (Puregold) contention that the same are merely a rehash of previous arguments already passed upon and discussed by the Court.

Petitioner's arguments rely on (1) the applicability of Section 131(A) of the National Internal Revenue Code of 1997 (Tax Code); and, (2) that the subject deficiency taxes are not covered by the tax amnesty under R.A. No. 9399. These contentions have been discussed and resolved by the CTA Second Division and there are no compelling reasons to deviate from the said rulings. x x x

The CIR's motion for reconsideration was likewise denied by the CTA en banc in its Resolution dated July 18, 2012 on the ground that the same is a mere rehash of previous arguments already considered and denied.

Unmoved by the CTA's repeated denial of its contention, the CIR filed with this Court the present petition raising the following errors allegedly committed by the tax court, viz:

I

THE HONORABLE CTA EN BANC GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE TAX AMNESTY TAX OF PHP 25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND SUBSTANTIAL FACT THAT PUREGOLD'S PLACE OF BUSINESS IS IN METRO MANILA AND NOT CLARK FIELD, PAMPANGA, AS STATED IN ITS ARTICLES OF INCORPORATION; THUS, PUREGOLD IS NOT ENTITLED TO THE BENEFITS UNDER RA 9399.

II

ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A DULY CSEZ REGISTERED ENTERPRISE WITH PRINCIPAL PLACE OF BUSINESS IN CLARK FIELD, PAMPANGA, STILL THE CTA EN BANC GRAVELY AND SERIOUSLY ERRED, AS ITS RULING IS CONTRARY TO THE INTENT OF RA 9399 WHICH EXCLUDES DEFICIENCY TAX; THUS, PUREGOLD REMAINS TO BE LIABLE FOR EXCISE TAXES ON ITS WINE, LIQUOR, AND TOBACCO IMPORTATIONS.

We find the petition bereft of merit.

The allegation of the CIR regarding

the principal place of business of

Puregold cannot be considered on

appeal; Puregold is entitled to avail
of the tax amnesty under RA 9399

In her petition, the CIR has introduced an entirely new matter, i.e., based on its Articles of Incorporation, Puregold's principal place of business is in Metro Manila for which reason it cannot avail itself of the benefits extended by RA 9399.

It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal^[13] and are barred by estoppel.^[14] To allow the contrary would constitute a violation of the other party's right to due process, and is contrary to the principle of fair play. In *Ayala Land Incorporation v. Castillo*,^[15] this Court held that:

It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.

During the proceedings in the CTA, the CIR never challenged Puregold's eligibility to avail of the tax amnesty under RA 9399 on the ground that its principal place of business, per its Articles of Incorporation, is in Metro Manila and not in Clark Field, Pampanga. Neither did the CIR present the supposed Articles of Incorporation nor formally offer the same in evidence for the purpose of proving that Puregold was not entitled to the tax amnesty under RA 9399. Hence, this Court cannot take cognizance, much less consider, this argument as a ground to divest Puregold of its right to avail of the benefits of RA 9399.

In any event, assuming *arguendo* that petitioner's new allegation can be raised on appeal, the same deserves short shrift. RA 9399, as couched, does not prescribe that the amnesty-seeking taxpayer has its principal office inside the CSEZ. It merely requires that such taxpayer be registered and operating within the said zone, stating that "registered business enterprises operating x x x within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone x x x may avail themselves of the benefits of remedial tax amnesty herein granted."

The following documents sufficiently prove that Puregold is registered as a locator by the CDC to operate business within the CSEZ, among others: (1) Exhibit "B" - Certificate of Registration, Certificate No. 94-16, issued by the CDC, CSEZ in favor of Puregold; (2) Exhibit "C" - Certificate of Registration, Certificate No. 98-54, issued by CDC, CSEZ in favor of Puregold; (3) Certificate of Tax Exemption, Certificate No. 94-16, issued by CDC, CSEZ in favor of Puregold; and (4) Certificate of Tax Exemption, Certificate No. 98-54, issued by CDC, CSEZ in favor of Puregold.

The following evidence also satisfactorily show that Puregold has been selling its goods exclusively within the CSEZ: (1) Exhibit "T" - Puregold's BIR Certificate of Registration; (2) Exhibits "U", "U-1" to "U-16" - Several BIR Permits issued to Puregold for use of cash registers; and (3) Exhibit "W"- BIR Certification that Puregold has no branch.^[16]

Clearly, the location of Puregold's principal office is not, standing alone, an argument against its availment of the tax amnesty under RA 9399 because there is no question that its actual operations were within the jurisdiction of the CSEZ.

RA 9399 grants amnesty from liability

to pay VAT and excise tax under Section

131 of the 1997 NIRC

Anent the second error raised by petitioner, it is worth noting that the CTA has ruled that the amnesty provision of RA 9399 covers the deficiency taxes assessed on Puregold and rejected the arguments raised on the matter by the CIR. It cannot be emphasized enough that the findings of the CTA merit utmost respect, considering that its function is by nature dedicated exclusively to the consideration of tax problems. The Court said as much in *Toshiba v. Commissioner of Internal Revenue*:^[17]

Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals*, [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

The issue on the coverage and applicability of RA 9399 to Puregold has already been addressed and disposed of by the CTA when it pointed out that RA 9399 covers all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto. Consequently, the government, through the enactment of RA 9399, has expressed its intention to waive its right to collect taxes, which in this case is the tax imposed under Sec. 131(A) of the 1997 NIRC, subject to the condition that Puregold has complied with the requirements provided therein.

The petitioner, however, would have this Court rule that Puregold's liability to pay the assessed deficiency taxes remains since these were not incurred by respondent due to this Court's decisions in *John Hay* and *Coconut Oil*, but are clearly imposable taxes and duties on Puregold's importation of alcohol and tobacco products under the 1997 NIRC. As adopted by the dissent, it is the CIR's position that even without the aforesaid rulings, respondent as a non-chartered SEZ remains liable for the payment of VAT and excise taxes on its importation of alcohol and tobacco products from January 1998 to May 2004.

We cannot sanction the CIR's position as it would amount to nothing less than an emasculation of an otherwise clear and valid law RA 9399. Clearly, if the Court would uphold the CIR's argument that even before the rulings in *John Hay* and *Coconut Oil*, respondent's duty-free privileges were already withdrawn by the 1997 NIRC, this Court would in effect be negating the remedial measure contemplated in RA 9399 against these rulings.

It is worthy to note that Sec. 1 of RA 9399 explicitly and unequivocally mentions businesses within the CSEZ as among the beneficiaries of the tax amnesty provided by RA 9399, viz:

SECTION 1. Grant of Tax Amnesty. - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993 x x x may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of *John Hay People's Coalition v. Lim, et. al.*, G. R. No. 119775 dated 24 October 2003 and *Coconut Oil Refiners Association, Inc. v. Torres, et al.*, G. R. No. 132527 dated 29 July 2005 x x x.

Hence, to conclude that respondent Puregold - a registered business enterprise operating within the CSEZ - cannot avail of the amnesty extended by the law with regard to its liability under Section 131(A) of the 1997 NIRC simply goes against the plain and unambiguous language of RA 9399.

Furthermore, to review the factual milieu, Puregold enjoyed duty- free importations and exemptions from local and national taxes under EO 80, a privilege which extended to business enterprises operating within the CSEZ all the incentives granted to enterprises within SSEZ by RA 7227. Hence, Puregold was repeatedly issued tax exemption certificates and the BIR itself did not assess any deficiency taxes from the time the 1997 NIRC took effect in January 1998.

Had the BIR believed that these tax incentives were already withdrawn, it would have immediately assessed the required tax deficiency assessments against Puregold after the promulgation of the 1997 NIRC. Yet, the BIR itself, one year after the 1997 NIRC took effect, confirmed through BIR Ruling No. 149-99 signed by then CIR Beethoven L. Rualo that the tax incentives extended to CSEZ operators by EO 80 were not affected by the 1997 NIRC:

While E.O. 80 and R.A. No. 7227, as implemented by Revenue Regulations No. 1-95, and as further implemented by 12-97, were approved and made effective prior to January 1, 1998, the date of effectivity of R.A. No. 8424, otherwise known as the Tax Code of 1997, the same are not covered by the above cited repealing provision of the said Code. Since it is settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and applications, unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing prior special statute, will ordinarily not affect the special provisions of such earlier statute. (*Steamboat Company vs. Collector, 18 Wall (US)*., 478; *Cass County vs. Gillet, 100 US 585*; *Minnesota vs. Hitchcock, 185 US 373, 396*)

Such being the case, the special income tax regime or tax incentives granted to enterprises registered within the secured area of Subic and Clark Special Economic Zones have not been repealed by R.A. 8424. (emphasis supplied)

As respondent Puregold correctly points out, BIR Ruling 149-99 has not been reversed or overruled either by the CIR or the Courts. In fact, the tax incentives enjoyed by businesses within CSEZ as provided for in EO 80 were even upheld by the BIR through a succeeding ruling.[18]

Without a doubt, the effectivity of Sec. 5, EO 80 and the privileges enjoyed by Puregold and similarly situated enterprises were not put into question until this Court categorically voided that provision in *Coconut Oil* on July 29, 2005.

In other words, without Our ruling in *Coconut Oil*, Puregold would have had continued to enjoy tax-free importation of alcohol and tobacco products into the CSEZ. It cannot, therefore, be gainsaid that the subject deficiency taxes first assessed by the BIR in November 2005, just months after the promulgation of *Coconut Oil*, [19] accrued because of such ruling. Hence, with more reason, these deficiency taxes are encompassed by the remedial measure that is RA 9399.

A holding to the contrary, as proposed by the dissent, will only perpetuate the nauseating, revolting, and circuitous exercise of governmental departments limiting, offsetting, and ultimately cancelling each other's official acts and enactments. Consider: in *Coconut Oil*, this Court annulled Sec. 5 of EO 80; then, Congress enacted RA 9399 to offset the full effect of such annulment by granting an amnesty; and, now, the petition would have this Court nullify the amnesty in RA 9399 by withdrawing the protection extended by the law to CSEZ

operators from its liabilities for the period prior to the promulgation of John Hay and Coconut Oil.

It need not be emphasized that stability and predictability are the key pillars on which our legal system must be founded and run to guarantee a business environment conducive to the country's sustainable economic growth. Hence, this Court is duty-bound to protect the basic expectations taken into account by businesses under relevant laws, such as RA 9399.

For this reason, this Court subscribes to the doctrine of operative fact, which recognizes that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration.[20] The seminal case of *Serrano de Agbayani v. Philippine National Bank*[21] discusses the application of the doctrine, thus:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*[22]

In fact, as pointed out in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[23] the doctrine of operative fact is incorporated in Section 246 of the 1997 NIRC, which provides:

SEC. 246. Non-Retroactivity of Rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

Thus, under Section 246 of the 1997 NIRC, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect.[24]

Without a doubt, Our ruling in Coconut Oil cannot be retroactively applied to obliterate the effect of Section 5 of EO 80 and the various rulings of the former CIR prior to the promulgation of our Decision in 2005.

Furthermore, a tax amnesty, by nature, is designed to be a general grant of clemency and the only exceptions are those specifically mentioned. In *Philippine Banking Corporation v. Commissioner of Internal Revenue*,[25] this Court held that:

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.

We cannot now deflect from the foregoing decision by reading into a law granting tax amnesty a qualification that is simply not there. To reiterate for emphasis, Sec. 1 of RA 9399 reads:

SECTION 1. Grant of Tax Amnesty. - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993 x x x may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of *John Hay People's Coalition v. Lim, et. al.*, G. R. No. 119775 dated 24 October 2003 and *Coconut Oil Refiners Association, Inc. v. Torres, et al.*, G. R. No. 132527 dated 29 July 2005, by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five Thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, that the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

It is significant to note that there is nothing in Sec. 1 of RA 9399 that excludes Sec. 131(A) of the 1997 NIRC from the amnesty. In fact, there is no mention at all of any tax or duty imposed by the 1997 NIRC as being specifically excluded from the coverage of the tax amnesty.

Article 7 of the Department of Finance's Order (DO) 33-07, which operated to implement RA 9399, also has clear exclusions and echoes RA 9399. It provides:

Article 7. Exclusions —The one-time remedial amnesty under RA 9399 shall not include applicable taxes and

duties on articles, raw materials, capital goods, equipment and consumer items removed from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties, as prescribed in the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

Clearly, the only exclusions that RA 9399 and its implementing rules mention are those taxes on goods that are taken out of the special economic zone. Yet, the petitioner herself admits that the assessment against Puregold does not involve such goods, but only those that were imported by Puregold into the CSEZ.[26]

If Congress intended Sec. 131 of the 1997 NIRC to be an exception to the general grant of amnesty given under RA 9399, it could have easily so provided in either the law itself, or even the implementing rules. In implementing tax amnesty laws, the CIR cannot now insert an exception where there is none under the law. And this Court cannot sanction such action.

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.^[27] Hence, not being excepted, the taxes imposed under Sec. 131(A) of the 1997 NIRC must be regarded as coming within the purview of the general amnesty granted by RA 9399, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.^[28]

Commissioner of Internal Revenue v. ROH Auto Products Philippines^[29] is instructive in this regard. In that case, the President issued EO 41 on August 21, 1986, declaring a one-time tax amnesty for the unpaid income taxes for the years 1981 to 1985. The BIR, arguing that the taxpayer was not covered, contended that the taxpayer received the tax assessments in question on August 13, 1986, or before the promulgation of the EO. Resolving the issue, this Court held that the EO granting the tax amnesty was quite clear in enumerating the exceptions. If assessments issued before August 21, 1986 are not listed as among the exclusions under the EO, then the BIR cannot insert it as such. We held, thus:

The real and only issue is whether or not the position taken by the Commissioner coincides with the meaning and intent of executive Order No. 41.

We agree with both the Court of Appeals and Court of Tax Appeals that Executive Order No. 41 is quite explicit and requires hardly anything beyond a simple application of its provisions. It reads:

x x x x x x x x

If, as the Commissioner argues, Executive Order No. 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. The conclusion is unavoidable, and it is that the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the cases specifically excepted by it.

A final note. It has been declared that "the power to tax is not the power to destroy while this Court sits."^[30] This Court cannot now shirk from such responsibility. It must at all times protect the right of the people to exist and subsist despite taxes.

WHEREFORE, the instant petition is DENIED and the May 9, 2012 Decision and July 18, 2012 Resolution of the Court of Tax Appeals (CTA) en banc in CTA EB No. 723 (CTA Case No. 7812) are hereby AFFIRMED.

Accordingly, the assessment against respondent Puregold Duty Free, Inc. in the amount of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (P2,780,610,174.51), supposedly representing deficiency value-added tax (VAT) and excise taxes on its

importations of alcohol and tobacco products from January 1998 to May 2004, is hereby CANCELLED and SET ASIDE.

SO ORDERED.

Peralta, and Reyes, JJ., concur.

Villarama, Jr., J., see dissenting opinion.

Mendoza,[*] J., joins the dissent of J. Villarama.

September 1, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____June 22, 2015____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 1, 2015 at 1:40 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Additional member per Special Order No. 2058 dated June 10, 2015.

[1] Otherwise known as "An Act Declaring a One-Time Amnesty on Certain Tax and Duty Liabilities, Inclusive of Fees, Fines, Penalties, Interests and other additions thereto, Incurred by Certain Business Enterprises Operating Within the Special Economic Zones and Freeports Created Under Proclamation No. 163, Series of 1993; Proclamation No. 216, Series of 1993; Proclamation No. 120, Series of 1991; and Proclamation No. 984, Series of 1997, Pursuant to Section 15 of Republic Act No. 7227, as Amended, and for Other Purposes."

[2] Specifically at C.M. Recto Hi-Way, P. Kalaw St., Clarkfield, Pampanga.

[3] Rollo, p. 203.

[4] Id. at 204.

[5] SECTION 5. Investment Climate in the CSEZ. -Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.

Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted. (emphasis supplied)

[6] SECTION 12. Subic Special Economic Zone.-x x x

The Subic Special Economic Zone 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 Subic Special Economic Zone, 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 Subic Special Economic Zone 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;

The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone 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 businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to be base areas. x x x (emphasis supplied)

[7] Rollo, pp. 205-240. See Judicial Affidavit of Marissa I. Delos Reyes (Dated 26 February 2009), id. at 266-267.

[8] G.R. No. 132527, July 29, 2005, 465 SCRA 47.

[9] Signed into law by then President Gloria Macapagal-Arroyo on March 20, 2007.

[10] G.R. No. 119775, October 24, 2003, 414 SCRA 356.

[11] Department Order No. (DO) 33-07 was thereafter issued by the Department of Finance (DOF) on September II, 2007 to prescribe the implementing rules and regulations for RA 9399.

[12] Rollo, pp. 556-557. Annexes "8" and "9" of Puregold's Comment.

[13] *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682.

[14] *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584; *Villaranda v. Villaranda*, 467 Phil. 1089, 1098 (2004).

[15] G.R. No. 178110, June 15, 2011, 652 SCRA 143.

[16] Rollo, p. 509. See Puregold's Formal Offer of Evidence before the CTA First Division, id. at 185-186.

[17] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

[18] BIR VAT Ruling No. 014-04, issued on 18 May 2004, granting VAT exemption to an operator of a duty free store in Clark Special Economic Zone.

[19] *Supra* note 8.

[20] *Republic v. Court of Appeals*, G.R. No. 79732, November 8, 1993, 227 SCRA 509; cited in *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013.

[21] 148 Phil. 443,447-448 (1971): cited in *Commissioner of Internal Revenue v. San Roque Power Corporation*, *supra*.

[22] Emphasis and underscoring supplied. Citations omitted.

[23] *Supra*.

[24] Emphasis supplied.

[25] G.R. No. 170574, January 30, 2009, 577 SCRA 366.

[26] Rollo, p. 23.

[27] PAGCOR v. BIR, G.R. No. 172087, March 15, 2011; Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI), represented by Ramon M Calo v. Nasipit Employees Labor Union (NELU)-ALU-TUCP, represented by Donell P. Dagani, G.R. No. 162411, June 30, 2008.

[28] C.N. Hodges v. Municipal Board. Iloilo City, et al., 125 Phil. 442, 449 (1967); Ruben E. Agpalo, STATUTORY CONSTRUCTION 222-223 (5th ed., 2003).

[29] G.R. No. 108358, January 20, 1995, 240 SCRA 368.

[30] Reyes v. Almanzor, Nos. L-49839-46, April 26, 1991, 196 SCRA 322.

DISSENTING OPINION

VILLARAMA, JR., J.:

If this is not SMUGGLING, I do not know what it is.

With all due respect, I DISSENT.

Before us is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated May 9, 2012 and Resolution[2] dated July 18, 2012 of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 723 (CTA Case No. 7812). The CTA En Banc upheld the Resolutions[3] dated November 25, 2010 and January 20, 2011 of the Second Division which cancelled and set aside the assessment for deficiency value-added tax (VAT) and excise tax against the respondent.

The Antecedents

Puregold Duty Free, Inc. (respondent) is a domestic corporation registered with the Securities and Exchange Commission (SEC) on June 13, 1994 and the Clark Development Corporation (CDC) as a Clark Special Economic Zone (CSEZ) Enterprise on July 20, 1994.[4]

On November 7, 2005, then Deputy Commissioner for Special Concerns/OIC-Large Taxpayers Service (LTS) of the Bureau of Internal Revenue (BIR) Kim S. Jacinto-Henares issued a Preliminary Assessment Notice regarding unpaid VAT and excise tax on wines, liquors and tobacco products imported by respondent from January 1998 to May 2004. Respondent through counsel protested the assessment, citing the tax exemptions granted to CSEZ pursuant to Executive Order No. (EO) 80. It noted that CSEZ enjoys similar tax incentives granted by Republic Act No. (R.A.) 7227 to Subic Special Economic and Freeport Zone (SSEFZ), and by analogy is thus also covered by the exception mentioned in Section 131 (A) of R.A. 8424 (National Internal Revenue Code of 1997). In a Supplementary Protest Letter and the Addendum thereto, respondent further invoked the provisions of R.A. No. 7916, Proclamation No. 1035 issued by then President Gloria Macapagal-Arroyo, and BIR Ruling No. 046-95 issued by then Commissioner Liwayway Vinzons-Chato.[5]

On October 26, 2007, respondent received the formal letter of demand for the payment of deficiency VAT and excise taxes assessed against its importation of alcohol and tobacco products for the taxable periods January 1998 to May 2004, in the total amount of P2,780,610,174.51 inclusive of fees, charges and interest. In reply, respondent's counsel wrote Elvira R. Vera, Head Revenue Executive Assistant, LTS-Excise Large Taxpayers

Division, requesting the cancellation of the assessment on the ground that respondent has already availed of tax amnesty under R.A. No. 9399 which relieved it of any civil, criminal or administrative liabilities for the applicable taxes and duties, inclusive of penalties, interests and other additions thereto.[6]

A Final Decision on Disputed Assessment was sent to respondent on June 23, 2008 stating that availment of the tax amnesty under R.A. 9399 does not necessarily relieve respondent of its deficiency VAT and excise tax liabilities, which arose from its importation of tobacco and alcohol products, in accordance with Section 131 (A) of the National Internal Revenue Code of 1997, as amended (1997 NIRC).[7]

On July 22, 2008, respondent filed a petition for review before the CTA, arguing that the subject assessment is void on grounds of prescription, the operative fact doctrine, non-retroactivity of BIR rulings and availment of tax amnesty under R.A. 9399. Respondent posited that its entitlement to tax and duty-free importation of capital goods, equipment, raw materials and supplies and household and personal items, in accordance with EO 80 and Customs Administrative Order No. 6-94, which interpreted R.A. 7227, and that special income tax regime or tax incentives granted to enterprises registered within the secured area of Subic and Clark Special Economic Zones remained despite the effectivity of R.A. 8424 (1997 NIRC) on January 1, 1998. Thus, as a CSEZ enterprise affected by the ruling in the case of Coconut Oil Refiners Association, Inc. v. Hon. Torres[8] which put into question the aforesaid issuances, respondent duly complied with the requirements for the grant of tax amnesty provided by R.A. 9399.

In its Answer, the Commissioner of Internal Revenue (petitioner), through the Solicitor General, asserted that pursuant to Section 131 (A) of the 1997 NIRC, as amended, tax and duty free exemptions on importation of alcohol and tobacco products are limited only to Duty Free Philippines, Inc., a government-operated duty free shop, as well as locators in the duly registered free port zones created under special laws, namely: Subic, Cagayan and Zamboanga Free Port Zones.

Respondent filed a motion for early resolution of the issue of tax amnesty and was allowed to present its evidence thereon, which was subsequently admitted by the CTA First Division. Resolution of the tax amnesty issue as requested by respondent was nevertheless deferred as the documents submitted by respondent failed to prove its total accrued tax liabilities. The case was set for further reception of evidence by both parties. Respondent's supplemental formal offer of evidence and petitioner's formal offer of documentary evidence were both admitted by the CTA First Division.[9]

On June 3, 2010, the CTA Second Division resolved that the issue of respondent's compliance with the provisions of R.A. 9399 should be properly resolved together with the other issues submitted by the parties after a full-blown trial. Respondent filed a motion for reconsideration but resolution thereof was likewise held in abeyance pending the submission of the notice of availment and tax amnesty return.[10]

Ruling of the CTA Second Division

On November 25, 2010, the CTA Second Division granted respondent's motion for reconsideration and forthwith resolved the issue of tax amnesty under R.A. 9399.[11]

The CTA Second Division found that respondent complied with the requirements for availing of the benefits under R.A. 9399 by filing a notice and return in such form as prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs, and thereafter, paying the amnesty tax of P25,000.00 within six (6) months from the effectivity of R.A. 9399.

On the question of whether respondent's tax liabilities are excluded under R.A. 9399, the CTA Second Division noted that what respondent sought to cancel was the assessment of deficiency VAT and excise taxes on imported

alcohol and tobacco products, which clearly are not taxes on articles, raw materials, capital, goods and consumer items removed from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. Hence, it was concluded that the subject impositions are not excluded from the coverage of amnesty as provided in Section 1 of R.A. 9399.

As to whether respondent is entitled to avail of the tax amnesty under R.A. 9399, the CTA Second Division declared that liability for VAT and excise taxes on importation of alcohol and cigars under Section 131 of the 1997 NIRC was obviously contemplated by R.A. 9399 as can be gleaned from the phrase "all national and local impositions under relevant tax laws, rules and regulations." Consequently, if respondent is liable for VAT and excise taxes under Section 131 (A) of the 1997 NIRC, then such amount will be used in determining the difference mandated by R.A. 9399.

The CTA Second Division thus ruled:

In the light of this Court's findings that petitioner has substantially complied with the tax amnesty program, petitioner is thereby relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty. However, the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local impositions under relevant tax laws, rules and regulations; and (ii) five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered.

Accordingly, the amount covered by the tax amnesty shall be the difference between the amount of P2,780,610,174.51, which comprises petitioner's deficiency excise tax and VAT; and the amount of P38,700,200.55 which is the equivalent of 5% tax on gross income earned by said registered business enterprises for the calendar year 1998 to 2004; or a total of P2,741,909,973.96. Details are as follows:

Deficiency Excise Tax, VAT and Inspection Fees per Assessment

Excise Tax

P 923,418,902.25

VAT

1,857,037,916.57

Inspection Fees

153,355.70

P2,780,610,174.51

Less: 5% Income Tax Paid Per Returns Filed

Exh

Year

5%Tax

G

1998

P 2,504,241.00

I

1999

11,357,233.00

K

2000

8,748,137.00

M

2001

3,419,044.00

O

2002

3,938,554.00

P

2003

4,295,522.00

Q

2004

4,437,469.55

38,700,200.55

Taxes covered by the tax amnesty

P2,741,909,973.96

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby GRANTED. The Resolution of this Court promulgated on June 3, 2010 is hereby set aside. Respondent's assessment against

petitioner for deficiency VAT and excise tax for the importation of alcohol and tobacco products covering the period January 1998 to May 2004 is hereby CANCELLED and SET ASIDE solely in view of petitioner's availment of Tax Amnesty under Republic Act No. 9399. Accordingly, the instant Petition for Review is hereby deemed WITHDRAWN and the case is considered CLOSED and TERMINATED.

SO ORDERED.[12]

Petitioner moved to reconsider the foregoing ruling but the CTA Second Division denied the motion in its January 20, 2011 Resolution.

Ruling of the CTA En Banc

By Decision dated May 9, 2012, the CTA En Banc dismissed petitioner's appeal. The CTA adopted in toto the findings and conclusions of the CTA Second Division on the issues raised anew by petitioner concerning the applicability of Section 131(A) of the 1997 NIRC to respondent's availment of the tax amnesty under R.A. 9399, and the exclusion of respondent's deficiency VAT and excise taxes on its importation of tobacco and alcohol products from the coverage of said amnesty.

Petitioner's motion for reconsideration was likewise denied under Resolution dated July 18, 2012.

Issues/Arguments

The petition sets forth the following grounds for reversal of the CTA En Banc ruling:

I

THE HONORABLE CTA EN BANC GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE AMNESTY TAX OF P25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND SUBSTANTIAL FACT THAT RESPONDENT'S PLACE OF BUSINESS IS IN METRO MANILA AND NOT CLARK FIELD, PAMPANGA, AS STATED IN ITS ARTICLES OF INCORPORATION; THUS, RESPONDENT IS NOT ENTITLED TO THE BENEFITS UNDER R.A. NO. 9399.

II

ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A DULY CSEZ REGISTERED ENTERPRISE WITH PRINCIPAL PLACE OF BUSINESS IN CLARK FIELD, PAMPANGA, STILL THE HONORABLE CTA EN BANC GRAVELY AND SERIOUSLY ERRED, AS ITS RULING IS CONTRARY TO THE INTENT OF R.A. 9399 WHICH EXCLUDES DEFICIENCY TAX; THUS, RESPONDENT REMAINS TO BE LIABLE FOR EXCISE TAXES ON ITS WINE, LIQUOR AND TOBACCO IMPORTATIONS.[13]

In fine, the issues presented to us are: (1) whether respondent is qualified to avail of the tax amnesty under R.A. 9399 considering that its principal place of business as stated in its articles of incorporation is in Metro Manila; and (2) whether R.A. 9399 applies to those taxes, i.e., VAT and excise taxes, imposed on alcohol and tobacco products described in R.A. 8424 and 9334, which are clearly and expressly mandated to be paid by enterprises like the respondent.

Our Ruling

The petition is meritorious.

R.A. 7227, otherwise known as the "Bases Conversion and Development Act of 1992", provided for the

conversion of the Clark and Subic military reservations and their extension such as the Camp John Hay in Baguio City, into alternative productive uses in order to promote economic and social development of the country, particularly Central Luzon. It likewise created the Bases Conversion and Development Authority (BCDA) which shall administer and implement a comprehensive development plan for the former military reservations and their extensions.

Section 12 of R.A. 7227 established the Subic Special Economic and Freeport Zone (SSEFZ) which was granted incentives such as tax and duty- free importations and exemption of businesses therein from local and national taxes, under a liberalized financial and business climate.

Section 15 of R.A. 7227 authorized the President of the Philippines to create by executive proclamation the CSEZ and other SEZs subject to the concurrence of the local government units directly affected.

On April 3, 1993, President Fidel V. Ramos issued Proclamation No. 163 creating the CSEZ with the BCDA as its governing body. EO 80 established the Clark Development Corporation (CDC) as the operating and implementing arm of the BCDA to manage the CSEZ. EO 80 also provided for tax incentives for CSEZ, viz:

SECTION 5. Investment Climate in the CSEZ. - Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.

Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted.

x x x (Emphasis supplied)

On July 5, 1994 President Ramos issued Proclamation No. 420, which established a SEZ on a portion of Camp John Hay and contained a similar provision on the grant of applicable incentives as in the above-cited provision of Proclamation No. 163.

On October 24, 2003, this Court ruled in *John Hay Peoples Alternative Coalition v. Lim*[14] that the same grant of privileges to the John Hay SEZ finds no support in R.A. 7227, the incentives under the latter law being exclusive only to the Subic SEZ. Such grant by Proclamation No. 420 of tax exemption and other privileges is void as it violates the Constitution's requirement that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress.

Almost two years later, in the case of *Coconut Oil Refiners Association, Inc. v. Hon. Torres*[15] this Court held EO 80 as an invalid exercise of executive legislation. Thus:

In *John Hay Peoples Alternative Coalition, et al. v. Victor Lim, et al.*, this Court resolved an issue, very much like the one herein, concerning the legality of the tax exemption benefits given to the John Hay Economic Zone under Presidential Proclamation No. 420, Series of 1994, "CREATING AND DESIGNATING A PORTION OF THE AREA COVERED BY THE FORMER CAMP JOHN AS THE JOHN HAY SPECIAL ECONOMIC ZONE PURSUANT TO REPUBLIC ACT NO. 7227."

In that case, among the arguments raised was that the granting of tax exemptions to John Hay was an invalid and illegal exercise by the President of the powers granted only to the Legislature. Petitioners therein argued that Republic Act No. 7227 expressly granted tax exemption only to Subic and not to the other economic zones yet to be established. Thus, the grant of tax exemption to John Hay by Presidential Proclamation contravenes

the constitutional mandate that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the members of Congress."

This Court sustained the argument and ruled that the incentives under Republic Act No. 7227 are exclusive only to the SSEZ. The President, therefore, had no authority to extend their application to John Hay. To quote from the Decision:

More importantly, the nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of a state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions, or local governments may pass ordinances on exemption only from local taxes.

The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress. In the same vein, the other kinds of privileges extended to the John Hay SEZ are by tradition and usage for Congress to legislate upon.

Contrary to public respondents' suggestions, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.

If it were the intent of the legislature to grant to John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in R.A. No. 7227.

In the present case, while Section 12 of Republic Act No. 7227 expressly provides for the grant of incentives to the SSEZ, it fails to make any similar grant in favor of other economic zones, including the CSEZ. Tax and duty-free incentives being in the nature of tax exemptions, the basis thereof should be categorically and unmistakably expressed from the language of the statute. Consequently, in the absence of any express grant of tax and duty-free privileges to the CSEZ in Republic Act No. 7227, there would be no legal basis to uphold [the] questioned portions of two issuances: Section 5 of Executive Order No. 80 and Section 4 of BCDA Board Resolution No. 93-05-034, which both pertain to the CSEZ.[16] (Emphasis supplied)

On March 20, 2007, President Gloria Macapagal-Arroyo signed into law R.A. 9399,[17] Sections 1 and 2 of which state:

SECTION 1. Grant of Tax Amnesty. - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993; Poro Point Special Economic and Freeport Zone created under Proclamation No. 216, series of 1993; John Hay Special Economic Zone created under Proclamation No. 420, series of 1994; and Morong Special Economic Zone created under Proclamation No. 984, series of 1997, may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of *John Hay People's Coalition v. Lim, et. al.*, G. R. No. 119775 dated 24 October 2003 and *Coconut Oil Refiners Association, Inc. v. Torres, et. al.*, G. R. No. 132527 dated 29 July 2005, by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross

income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, That the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

SEC. 2. Immunities and Privileges. Those who have availed themselves of the tax amnesty and have fully complied with all its conditions shall be relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty granted under Section 1 herein.

Respondent's Actual Business

Operations is in Clark Field,
Pampanga

The Solicitor General argues that while respondent may have complied with the required filing of notice and return, respondent is not qualified, in the first place, to avail of the benefits under the above-cited tax amnesty law because its principal place of business as stated in its articles of incorporation is Metro Manila and not Clark Field, Pampanga.

Contending that this issue was raised for the first time on appeal, respondent noted that petitioner CIR never made any allegation or evidence during the proceedings at the BIR and before the CTA that the principal place of business is not in Clark Field, Pampanga.

Ordinarily, a party cannot raise for the first time on appeal an issue not raised in the trial court.[18] The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[19] In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, [20] we took exception to an issue raised for the first time in the Supreme Court, thus:

x x x As clearly ruled by Us "To allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level," would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. Thus it is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot generally be raised for the first time on appeal. x x x

Nonetheless it is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.[21] (Emphasis supplied; citation omitted)

Since the issue raised by the Solicitor General is crucial for determining the validity of the government's claim for unpaid taxes, we now proceed to resolve it.

Respondent's articles of incorporation registered with the SEC on June 13, 1994 indicated Metro Manila as its principal office.[22] Attached to its Comment, however, is a photocopy of Certificate of Filing of Amended Articles of Incorporation[23] issued by the SEC on September 7, 1995 stating that its principal office is to be established or is located at Clark Field, Pampanga.

The statement of the principal office in the articles of incorporation establishes the residence of the corporation. This may prove important in determining venue in an action by or against a corporation, or in determining the province where a chattel mortgage of shares should be registered.[24] For jurisdictional purpose, the place of business indicated in the articles of incorporation is binding.[25]

R.A. 9399 requires that the taxpayer seeking amnesty be a registered business enterprise of and operating within the special economic zones, in this case, the CSEZ created pursuant to Proclamation No. 163. Respondent adduced substantial evidence before the CTA that it is a duly registered CSEZ business enterprise and actually conducts its business therein by operating a duty-free shop. Among the documentary evidence submitted are the Certificate of Registration as a locator and Certificates of Tax Exemption both issued by CDC and CSEZ, as well as BIR Certificate of Registration, several BIR Permits to operate cash registers, and a BIR Certification that respondent has no registered branch under Puregold Duty Free, Inc. Respondent's Accounting Manager, Marissa I. delos Reyes, also submitted her Judicial Affidavit and testified in court in support of the allegations in the petition for review filed in the CTA.[26]

Proof of respondent's actual business operations within CSEZ, rather than the place of principal office, is relevant for the availment of one-time tax amnesty under R.A. 9399. This is evident from Rule 2, Article 4 of the Implementing Rules and Regulations of R.A. 9399, Department Order No. 33-07 issued on September 11, 2007, declaring the coverage of R.A. 9399 as follows:

ARTICLE 4. Coverage. - Business enterprises operating, authorized, duly registered and granted with tax and duty incentives prior to the effectivity of RA 9399, within the following Special Economic Zones and Freeport Zones may avail themselves of the one-time remedial amnesty, to wit:

- Clark Special Economic Zone (CSEZ) created under Proclamation No. 163, Series of 1993;

x x x x (Emphasis supplied)

In fine, we hold that respondent satisfactorily established its actual business operations within the CSEZ and hence is qualified, for purposes of Section 1, R.A. 9399 to apply for tax amnesty granted to duly registered business enterprises of SEZs specifically mentioned therein.

Respondent Liable to Pay Assessed Deficiency Taxes

While petitioner's contention as to respondent's lack of qualification to apply for tax amnesty is clearly without legal basis, we find its argument that the tax amnesty granted under R.A. 9399 does not include those applicable taxes and duties on the importation of alcohol and tobacco products tenable.

R.A. 8424, otherwise known as the Tax Code of 1997 (1997 NIRC), was passed into law on December 11, 1997 and took effect on January 1, 1998. Thus, at the time respondent started the subject importation of alcohol and tobacco products in the year 1998, the governing law is Section 131 (A) which reads:

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

(A) Persons Liable.- x x x

x x x x x x x x

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits 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: Provided, however, That this shall not apply to cigars and cigarettes, distilled spirits 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 are not transshipped to any other port in the Philippines: Provided, further, That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon: Provided, still further, That such articles directly imported by a government-owned and operated duty-free shop like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': Provided, still further, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: Provided, finally, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

x x x x x x x x

Considering that CSEZ was not a duly chartered or legislated SEZ, it is not exempt from the applicable taxes on importation of alcohol and tobacco products. Section 15 of R.A. 7227 merely authorized the creation of CSEZ by executive proclamation. And as we held in *John Hay Peoples Alternative Coalition v. Lim*[27] and *Coconut Oil Refiners Association, Inc. v. Han. Torre*,[28] the tax incentives being claimed by Clark and other SEZs pursuant to EO 80 and related issuances cannot be sustained as these contravenes the Constitution which requires the concurrence of Congress in the grant of tax exemptions.

Respondent likewise cannot seek refuge from R.A. 9400,[29] which, while amending Section 15 of R.A. 7227, still is not the charter or legislation establishing the CSEZ and CFZ. While amending Section 15 of R.A. 7227, said law reproduced the provision authorizing the President to create by executive proclamation the CSEZ and inserted sub-sections on Poro Point Freeport Zone, Morong SEZ and John Hay SEZ, all similarly created by previous Presidential Proclamations. approved on March 20, 2007, long after the assessment of deficiency taxes. Moreover, R.A. 9400 was on March 20, 2007, long after the subject importations and assessment of deficiency taxes.

Significantly, Section 131 (A) of the 1997 NIRC was amended by R.A. 9334, approved on December 31, 2004, which no longer exempted the SEZs from applicable duties and taxes on imported alcohol and tobacco products, viz:

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

(A) Persons Liable. - x x x

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.

Section 131 (A) was further amended by R.A. 10351[30] approved on December 19, 2012, which did not change the application of duties and charges even to chartered and legislated SEZs and freeports.

In the light of the foregoing, the CTA clearly erred in holding that petitioner has no rightful claim over the unpaid taxes assessed against respondent's importation of alcohol and tobacco products for the taxable period January 1998 to May 2004. The CTA's ruling stemmed from its narrow and erroneous interpretation of Section 1, R.A. No. 9399 by citing Article 7 of Department Order No. 33-07 on exclusions:

ARTICLE 7. Exclusions.- The one-time remedial amnesty under RA 9399 shall not include applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties, as prescribed in the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

The CTA also erred in concluding that the applicable taxes and duties under Section 131 (A) of the 1997 NIRC were already contemplated by the legislature in enacting R.A. 9399 by the phrase "all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto" It failed to consider that said phrase was further qualified by the succeeding phrase "incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay People's Coalition v. Lim, et. al., G.R. No. 119775 dated 23 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G.R. No. 132527 dated 29 July 2005." The assessed deficiency taxes including the penalties, interests and charges, were not incurred by respondent due to the aforesaid decisions of this Court, but are clearly imposable taxes and duties on their importation of alcohol and tobacco products under existing provisions of the Tax Code. In other words, even without the aforesaid rulings, respondent as a non-chartered SEZ remains liable for the payment of VAT and excise taxes on its importation of alcohol and tobacco products from January 1998 to May 2004.

Respondent's reliance on BIR Ruling No. 149-99 is likewise misplaced. The CIR had opined therein that while EO 80 and R.A. 7227 were approved and made effective prior to January 1, 1998, the date of effectivity of R.A. No. 8424, they are not covered by the repealing provision of the new Tax Code (Section 291). EO 80, insofar as it granted similar tax incentives to CSEZ, is clearly inconsistent with Section 131 (A) which then limited the tax exemption for importation of alcohol and tobacco products those duly chartered and legislated SEZs and freeports.

In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, [31] we held that "the [Commissioner] cannot, in the exercise of [its interpretative] power, issue administrative rulings or circulars not consistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law."

In the earlier case of *Philippine Bank of Communications v. Commissioner of Internal Revenue*, [32] we ruled that a memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. There could be no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same. [33]

A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[34] Taxes being the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents[35] the present amnesty tax law must be strictly construed against herein respondent which claims tax incentives granted to it by mere presidential proclamation. It is likewise settled that taxes are the lifeblood of the government and their prompt and certain availability is an imperious need.[36]

I therefore VOTE that--

- The present petition be GRANTED;
- The Decision dated May 9, 2012 and Resolution dated July 18, 2012 of the Court of Tax Appeals En Banc in CTA EB No. 723 (CTA Case No. 7812) be REVERSED and SET ASIDE;
- Respondent Puregold Duty Free, Inc. be ORDERED to PAY P2,780,610,174.51 deficiency VAT and excise taxes inclusive of surcharge and interest, plus 20% deficiency interest computed from June 23, 2008 until full payment thereof pursuant to Section 249 (C) of the 1997 National Internal Revenue Code, as amended; and
- Should any motion for reconsideration be filed, the same be referred to the Banc as the subject matter herein may have a hue financial impact on businesses thus affecting the country's welfare.[37]

[1] Rollo, pp. 61-67. Penned by Associate Justice Amelia R. Cotangco-Manalastas.

[2] Id. at 68-70.

[3] CTA En Banc records, pp. 22-33.

[4] CTA Division records, pp. 218-233.

[5] BIR records, pp. 87-88, 91-105, 123-129 & 131-133.

[6] CTA Division records, pp. 21, 26-27.

[7] Id. at 89-90.

[8] 503 Phil. 42 (2003).

[9] CTA Division records, pp. 167-182, 211-323, 329-330, 332-341, 394, 427-428.

[10] Id. at 442-444, 492-494.

[11] Supra note 3, at 22-29.

[12] Id. at 28-29.

[13] Rollo, pp. 30-31.

[14] 460 Phil. 530 (2003).

[15] Supra note 8.

[16] Id. at 60-61.

[17] AN ACT DECLARING A ONE-TIME AMNESTY ON CERTAIN TAX AND DUTY LIABILITIES, INCLUSIVE OF FEES, FINES, PENALTIES, INTERESTS AND OTHER ADDITIONS THERETO,

INCURRED BY CERTAIN BUSINESS ENTERPRISES OPERATING WITHIN THE SPECIAL ECONOMIC ZONES AND FREEPORTS CREATED UNDER PROCLAMATION NO. 163, SERIES OF 1993; PROCLAMATION No. 216, SERIES OF 1993; PROCLAMATION NO. 420, SERIES OF 1994; AND PROCLAMATION NO. 984, SERIES OF 1997, PURSUANT TO SECrtON 15 OF REPUBLIC ACT No. 7227, As AMENDED, AND FOR OTHER PURPOSES.

[18] Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc., 493 Phil. 785, 792 (2005), citing *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35, 47 (2002).

[19] Commissioner of Internal Revenue v. Eastern Telecommunications Phils., Inc., 638 Phil. 334, 348 (2010), citing *CIR v. Mirant Pagbilao Corporation*, 535 Phil. 481, 491 (2006).

[20] 243 Phil. 703 (1988).

[21] *Id.* at 709.

[22] CTA Division records, pp. 218-229.

[23] Rollo, pp. 551-555.

[24] J. CAMPOS, JR. and M. C. L. CAMPOS, *The Corporation Code: Comments, Notes and Selected Cases*, Vol. 1, 1990 Ed., p. 77.

[25] C. L. VILLANUEVA, *Philippine Corporate Law*, 2001 Ed., p. 201.

[26] CTA Division records, pp. 231-237 & 291-322.

[27] *Supra* note 14.

[28] *Supra* note 8.

[29] AN ACT AMENDING REPUBLIC ACT No. 7227, AAMENDED, OTHERWISE KNOWN As THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

[30] AN ACT RESTRUCTURING THE EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS BY AMENDING SECTIONS 141, 142, 143, 144, 145, 8, 131 AND 288 OF REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9334, AND FOR OTHER PURPOSES.

[31] 453 Phil. 1043, 1052 (2003).

[32] 361 Phil. 916 (1999).

[33] *Id.* at 931.

[34] *Bañas, Jr. v. Court of Appeals*, 382 Phil. 144, 156 (2000). See also *People v. Castaneda, Jr.*, 247-A Phil. 420, 434 (1988), citing *E. Rodriguez, Inc. v. The Collector of Internal Revenue*, 139 Phil. 354, 364 (1969); *Commissioner of Internal Revenue v. Guerrero*, 128 Phil. 197, 201 (1967).

[35] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 106611, July 21, 1994, 234 SCRA 348, 356.

[36] *Province of Tarlac v. Alcantara*, G.R. No. 65230, 23 December 1992, 216 SCRA 790, 798.

[37] Internal Rules of the Supreme Court, A.M. No. 10-4-20-SC, Part I, Rule 2, Section 3, sub-paragraph k)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.