



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**AIRLIFT ASIA CUSTOMS
BROKERAGE, INC. and ALLAN G.
BENEDICTO,**

Petitioners,

-versus-

**COURT OF APPEALS,
COMMISSIONER OF THE BUREAU
OF CUSTOMS, AND THE
SECRETARY OF FINANCE**

Respondents.

G.R. No. 183664

Present:

CARPIO, J., *Chairperson*,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

JUL 28 2014

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DECISION

BRION, J.:

Through a petition for *certiorari* under Rule 65 of the Rules of Court filed before the Court, the petitioners – Airlift Asia Customs Brokerage, Inc. and Allan G. Benedicto – assail the decision dated February 28, 2008¹ and the resolution dated May 27, 2008² of the Court of Appeals (CA) in CA-G.R. CV No. 88291.³ These CA rulings reversed and set aside the decision dated September 6, 2006⁴ of the Regional Trial Court (RTC) of Manila, Branch 8, in Civil Case No. 06-115029, which upheld the validity of **Customs Administrative Order No. 3-2006 (CAO 3-2006)**.

¹ Rollo, pp. 83-110.

² Id. at 111.

³ Penned by then Court of Appeals Justice Martin S. Villarama, Jr. (now Associate Justice of this Court), with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring.

⁴ Rollo, pp. 61-82; penned by Presiding Judge Felixberto T. Olalia, Jr.

The Facts

CAO 3-2006 was issued by the then Commissioner of the Bureau of Customs (*BOC*) Napoleon L. Morales, with the approval of then Secretary of Finance Margarito B. Teves, on March 2, 2006. It covers the Rules and Regulations Governing the Accreditation of the Customs Brokers Transacting with the BOC and essentially requires the accreditation by the BOC of customs brokers who intend to practice before the BOC.

Part I of CAO 3-2006 defines accreditation as “*the process for registration and/or listing of customs brokers desiring to engage in customs brokers practice.*”⁵ Accordingly, the accreditation process is included in the issuance’s definition of a “custom broker”:

2.1. “Customs Broker” refers to any bona fide holder of a valid Certificate of Registration/Personal Identification Card issued by the Professional Regulatory Board and the Professional Regulatory Commission, **who is accredited to practice in the Bureau of Customs.** [emphasis supplied]

Thus, **CAO 3-2006 requires “customs brokers desiring to practice their profession at the BOC [to] apply for accreditation and [to] obtain a Certificate of Accreditation before they may engage in customs brokerage practice.”**⁶ Once accredited, customs brokers are entitled to practice their profession in any port of entry in the Philippines.⁷

The petitioners assailed the validity of CAO 3-2006 through an action for declaratory relief before the Regional Trial Court of Manila, Branch 8.⁸ They primarily claimed that CAO 3-2006 was issued without authority, contravenes Republic Act No. 9280 (*RA 9280*) or the *Customs Brokers Act of 2004*, and violates their right to practice the customs broker profession.

The RTC upheld the petitioners’ contentions and nullified CAO 3-2006.⁹ It found that the BOC Commissioner had no authority to issue rules governing the practice of the customs brokerage profession.¹⁰ This power, initially lodged with the Commissioner of the Civil Service under Section 3409 of the Tariff and Customs Code of the Philippines (*TCCP*), had been transferred upon the passage of RA 9280 to the Professional Regulatory Board for Customs Brokers (*PRBCB*), which is under the supervision and administrative control of the Professional Regulation Commission (*PRC*).¹¹

The trial court also held that the required accreditation amounted to a licensing requirement prohibited under Section 19 of RA No. 9280. This

⁵ Part I – 3 Accreditation of Customs Brokers Required with the Bureau of Customs, CAO 3-2006.

⁶ Id.

⁷ Part II – 4.2, CAO 3-2006.

⁸ Civil Case No. 06-115029.

⁹ Decision dated 6 September 2006.

¹⁰ *Rollo*, pp. 78-79.

¹¹ Section 5, RA 9280.

provision states that customs brokers who have been issued certificates of registration by the PRBCB shall be allowed to practice the profession in any collection district without the need of securing another license from the BOC. By requiring accreditation, CAO 3-2006 imposed an additional qualification not found in the law.¹²

On appeal, **the CA reversed the RTC ruling** finding its construction of CAO 3-2006 rigid and crippling on the BOC's efforts to ensure efficient customs administration and collection of taxes and duties. Although the accreditation requirement was an added burden to customs brokers, it nevertheless bore a reasonable connection to the BOC's aim to ensure accountability and integrity in the transactions involving customs duties and tariff laws.¹³ Accordingly, **the CA reversed the RTC ruling and declared CAO 3-2006 valid.** It also denied the petitioners' motion for reconsideration.

The petitioners assail the CA rulings through the present *certiorari* petition with the Court.

The Court's Ruling

The Court finds the petition **meritorious**.

RA No. 9280 expressly repealed Sections 3401 to 3409 of the TCCP and transferred the supervision and regulation of the customs brokerage profession from the Board of Examiners to the PRBCB.

Prior to the passage of RA 9280, the TCCP (specifically, Sections 3401 to 3409 thereof) governed the entry, regulation, and supervision of the customs broker profession.

Sections 3401 and 3402 of the TCCP required all applicants for customs brokers' certificates to pass a written examination given by the Board of Examiners for Customs Brokers¹⁴ under the supervision of the Civil Service Commission (CSC).¹⁵ The Board of Examiners was composed of the BOC Commissioner as *ex-officio* chairman, the Tariff Commissioner, and three other members appointed by the President.¹⁶ An examinee who

¹² *Rollo*, pp. 79-81.

¹³ *Id.* at 108.

¹⁴ SEC. 3401. Qualifications of Applicants for Customs Broker's Certificate. - All applicants for customs broker's certificates shall pass a written examination for the purpose x x x

¹⁵ SEC. 3402. Examination by the Board of Examiners for Customs Brokers. - Examinations for customs broker shall be given by the Board of Examiners for customs broker under the supervision of the Civil Service Commission. Application for admission to such examination - shall be filed with the Civil Service Commission x x x

¹⁶ SEC. 3403. The Board of Examiners. - The board of Examiners for Customs Brokers shall be composed of the Commissioner of Customs, as *ex-officio* chairman, the Tariff Commissioner and three (3) others members who shall be appointed by the President upon the recommendation of the Commissioner of Civil Service. x x x.

passes the exam would be issued a certificate as customs broker signed by the members of the Board of Examiners and the Civil Service Commissioner. If the certified customs broker would like to establish a customs brokerage business in any port in the Philippines, he/she must secure an annual license from the Collector of Customs of the port concerned.¹⁷

A complaint for suspension or revocation of the custom broker's certificate is filed with the Board of Examiners, which conducts the investigation and submits its findings and recommendations with the Civil Service Commissioner who makes the final decision. If the charge involves smuggling, the BOC Commissioner may likewise revoke his/her license.¹⁸

Considering the BOC Commissioner's functions as *ex-officio* Chairman of the Board of Examiners, the TCCP has effectively allowed him to exercise control over the customs broker profession. The enactment of RA 9280, however, brought about significant changes.

Section 39 of RA 9280 expressly repealed the TCCP provisions (Section 3401 to 3409) on the customs brokers profession. Section 39 of RA 9280 further declared that "all laws...and parts thereof which are inconsistent with [RA 9280] are [deemed] modified, suspended, or repealed accordingly."

In lieu of the Board of Examiners, RA 9280 created the PRBCB¹⁹ whose members are appointed by the President from a list of recommendees submitted by the PRC which has supervisory and administrative control over the PRBCB. **Significantly, RA 9280 excluded the BOC Commissioner as member of the PRBCB.** The exclusion of the BOC Commissioner as a member of the PRBCB evinces the legislative intent to remove any power he previously exercised over custom brokers, and to transfer the supervision, control and regulation of this profession to the PRBCB. This intent is likewise apparent from a reading of the powers granted to the PRBCB:

¹⁷ SEC. 3406. Annual License Fee. - Any person who is a holder of a customs broker's certificate, desiring to establish a customs brokerage business at any port in the Philippines shall apply for an annual cense from the Collector of the port concerned x x x.

¹⁸ SEC. 3407. Issuance, Revocation and Suspension of Certificate. - x x x A complaint for the suspension or revocation of the certificate of a customs broker shall be filed with the Board of Examiners for Customs Brokers which shall investigate the case and shall submit its findings and recommendations to the Commissioner of Civil Service and shall immediately furnish the respondent customs broker with a copy of his decision.

Any person who files an entry or facilitates the processing or release of any shipment shall be liable for smuggling if the ostensible owner, importer or consignee and/or the ostensible given address of the owner, importer or consignee is fictitious and the shipment is found to be unlawful. If the violator is a customs broker, his license shall be revoked by the Commissioner of Customs.

¹⁹ SEC. 5. Creation and Composition of the Professional Regulatory Board for Customs Brokers. - There is hereby created a Professional Regulatory Board for Customs Brokers, hereinafter referred to as the Board, under the supervision and administrative control of the Professional Regulation Commission, hereinafter referred to as the Commission, to be composed of a chairman and two (2) members who shall be appointed by the President of the Philippines from among the list of three (3) recommended for each position submitted by the commission from a list of five (5) nominees for each position submitted by the accredited professional organization of customs brokers. The new Board shall be constituted within three (3) months from the effectivity of this Act.

Section 7. *Powers and Functions of the Board.* – x x x

(b) Supervise and regulate the licensure, registration, and practice of customs brokers profession;

x x x x

(e) Register successful examinees in the licensure examination and issue the corresponding Certificate of Registration and Professional Identification Card;

x x x x

(g) Look into the conditions affecting the practice of customs brokerage, **adopt measures for the enhancement of the profession and the maintenance of high professional, technical, and ethical standards**, and conduct ocular inspection of places where customs brokers practice their profession; [emphasis supplied]

By conferring these powers on the PRBCB, the declared policy of RA 9280 to professionalize the practice of the customs broker profession is executed and fulfilled.²⁰

The assailed CA decision, however, declared that the passage of RA 9280 did not divest the BOC Commissioner of his authority over customs brokers. The BOC Commissioner retains the general power “to regulate the activities of licensed customs brokers insofar as the enforcement of tariff laws and prevention of smuggling and other illegal schemes to defraud the government of lawful revenues.”²¹ It adds that “[t]o strip the BOC [Commissioner] of any disciplinary and supervisory authority over license customs brokers... would not only cripple the [BOC’s] intensified drive to combat smuggling and derail the all-out program...to increase collection targets.”²²

Although we cannot deny that the BOC Commissioner has the mandate to enforce tariff laws and prevent smuggling, these powers do not necessarily include the power to regulate and supervise the customs broker profession through the issuance of CAO 3-2006.

The BOC Commissioner’s power under Section 608 of the TCCP is a *general* grant of power to promulgate rules and regulations necessary to enforce the provisions of the TCCP. Under the rules of statutory construction, this general rule-making power gives way to the *specific* grant of power to promulgate rules and regulations *on the practice of customs brokers profession* to the CSC Commissioner under Section 3409 of the TCCP.²³ Indeed, in the exercise of this specific power, the Board of

²⁰ Section 2, RA 9280.

²¹ *Rollo*, p. 107.

²² *Id.* at 108.

²³ SEC. 3409. Rules and Regulations by the Commissioner of Civil Service. - The Commissioner of Civil Service, upon recommendation of the Board of Examiners for Customs Brokers, shall

Examiners (of which the BOC Commissioner serves as *ex-officio* chairman) was to perform only a recommendatory role. With the repeal of Section 3409 of the TCCP by RA 9280, this specific rule-making power was transferred to the PRBCB to complement its supervisory and regulatory powers over customs brokers. Section 37 of RA 9280 provides:

SEC. 37. Implementing Rules and Regulations. – The [PRBCB], subject to the approval by the Commission, in coordination with the accredited professional organization, shall issue and promulgate the rules and regulations, including the Code of Ethics for customs broker profession needed to implement the provision of this Act.

The BOC, like the Bureau of Internal Revenue (*BIR*), performs a critical role in government revenue collection. The integrity and efficiency of transactions before both these agencies is important, and all persons dealing with them must strictly adhere to their respective rules and regulations. The similarity in the functions and concerns of the BOC and the BIR, however, does not support a grant of power to accredit customs brokers to the BOC Commissioner. Unlike the BOC Commissioner whose power over customs brokers was – at the very least – implied and indirect, the BIR Commissioner was given express and specific powers to accredit and register tax agents under Section 6(G) of the National Internal Revenue Code (NIRC):

SEC. 6. Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement. – x x x

(G) *Authority to Accredite and Register Tax Agents.* - The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns, statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers. x x x

CAO 3-2006 amounts to a licensing requirement that restricts the practice of profession of customs brokers and is prohibited by RA 9280

Attempts to uphold the validity of CAO 3-2006 were made by arguing that CAO 3-2006 intends to regulate only the practice *before the BOC*, which is claimed to be one aspect of the multi-faceted brokerage profession. The accreditation requirement being limited only to a particular facet of the practice of the profession, CAO 3-2006 purportedly does not preclude licensed customs brokers from pursuing other areas of practice even without having been accredited by the BOC.

promulgate rules and regulations as may be necessary to carry out the provisions of Part 1 [Customs Brokers] of this title.

We find this view misplaced for several reasons.

The practice of customs brokers admittedly involves a variety of activities as enumerated in Section 6 of RA 9280:

SEC. 6. Scope of the Practice of Customs Brokers. – Customs Broker Profession involves services consisting of consultation, preparation of customs requisite document for imports and exports, declaration of customs duties and taxes, preparation signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles and rendering of other professional services in matters relating to customs and tariff laws its procedures and practices.

A customs brokers and shall be considered in the practices of the profession if the nature and character of his/her employment in private enterprises requires professional knowledge in the field of customs and tariff administration. He/She is also deemed in the practice of custom Broker profession if he/she teaches customs and tariff administration subjects in any university, college or school duly recognized by the government.

Notably, with the exception of consulting with clients, and teaching tariff and customs administration, most of the above-enumerated activities involve dealing with the BOC. In other words, **a large part of a custom brokers' work involves practice before the BOC, and CAO 3-2006 practically compels all customs brokers – already certified by the PRC – to comply with the accreditation requirement for them to practice their profession.** This is contrary to the terms of Section 19 of RA 9280, which provides that **a customs broker “shall be allowed to practice the profession in any collection district without the need of securing another license from the [BOC].”**

We are unconvinced by the BOC Commissioner's claim that CAO 3-2006's accreditation requirement is not a form of license. A license is a “permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation.”²⁴ Since it is only by complying with CAO 3-2006 that a customs broker can practice his profession before the BOC, the accreditation takes the form of a licensing requirement proscribed by the law. It amounts to an additional burden on PRC-certified customs brokers and curtails their right to practice their profession. Under RA 9280, a successful examinee of the customs brokers examinations acquires a Certificate of Registration, which entitles him **to practice the profession as a customs broker with all the benefits and privileges appurtenant thereto.**²⁵


²⁴ Black's Law Dictionary (5th ed.), p. 829.

²⁵ Section 19, RA 9280.

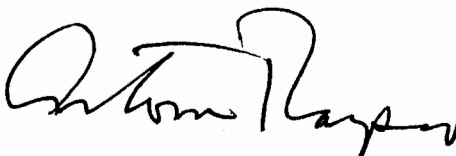
Moreover, a reading of CAO 3-2006 does not appear to be restricted only to “practice before the BOC.” Pars. 1 and 2, Part IV of CAO 3-2006 requires custom brokers to maintain complete records covering their professional practice. Par. 11, Part IV of the same issuance governs the custom broker’s role in advising clients. Although it may be argued that these duties/activities have reasonable connection with practice before the BOC as to be within the scope of CAO 3-2006, this reasoning only reinforces the position that the practice by the customs broker of his profession is mainly tied with practice before the BOC.

WHEREFORE, we hereby **GRANT** the petition. The assailed Decision dated February 28, 2008 and Resolution dated May 27, 2009 of the Court of Appeals in CA-G.R. CV No. 88291 are **REVERSED** and **SET ASIDE**, and the Decision dated September 6, 2006 of the Regional Trial Court of Manila, Branch 8, in Civil Case No. 06-115029 is **REINSTATED**. No costs.

SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

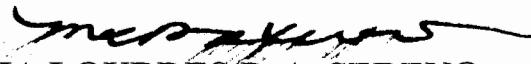
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice