

THIRD DIVISION

[G.R. No. 179516, March 17, 2009]

**HON. EXECUTIVE SECRETARY, COMMISSIONER OF CUSTOMS,
AND THE DISTRICT COLLECTOR OF CUSTOMS OF THE PORT
OF SUBIC, PETITIONERS, VS. NORTHEAST FREIGHT
FORWARDERS, INC., RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court assailing the Decision^[1] dated 6 February 2007 and Resolution^[2] dated 4 September 2007 of the Court of Appeals in CA-G.R. SP No. 94646. The Court of Appeals, in its assailed Decision, affirmed the Order dated 22 March 2006^[3] of the Regional Trial Court (RTC), Branch 74, Olongapo City, allowing the intervention of respondent Northeast Freight Forwarders, Inc. in Civil Case No. 179-0-05; and in its assailed Resolution, denied the Motion for Reconsideration of petitioners Executive Secretary, Commissioner of Customs, and District Collector of Customs of the Port of Subic.

The antecedent facts of the case are as follows:

On 4 April 2005, President Gloria Macapagal-Arroyo issued Executive Order No. 418, entitled, "Modifying the Tariff Nomenclature and Rates of Import Duty on Used Motor Vehicles under Section 104^[4] of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464, as amended)." Executive Order No. 418 imposed additional specific duty in the amount of P500,000.00 for used motor vehicles imported into the country. Relevant provisions of Executive Order No. 418 are hereunder reproduced:

SECTION 1. The articles specifically listed in Annex "A" hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to the rates of import duty indicated opposite each articles except for trucks, buses and special purpose vehicles.

SEC. 2. In addition to the regular rates of import duty, the articles specifically listed in Annex "A" hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended, shall be subject to additional specific duty of P500,000.00.

Following the effectivity of Executive Order No. 418, seven enterprises at the Subic Bay Freeport Zone (formerly Subic Naval Base area), namely: Unitrans Subic Ventures Corp., Akram Subic Bay Trading Corp., Chifil Subic International Trading, Lucky Dale Subic International, Inc., Phil-Pan Subic Ventures, Inc., Sunlift Subic International Corporation, and JJB Century International Ventures Corp. (collectively referred to as the Subic enterprises), filed before the RTC of Olongapo City a Petition for declaratory relief^[5] challenging the constitutionality and legality of Executive Order No. 418 on the ground that it violates their property rights and impairs the obligation of contracts. The Petition, docketed as Civil Case No. 179-0-05, was raffled to Branch 74 of the RTC, Olongapo City.

On 12 August 2005, RTC Judge Ramon S. Caguioa issued an Order granting the application of the Subic enterprises for the issuance of a writ of preliminary injunction enjoining the implementation of Executive Order No. 418.^[6]

To avail itself of the effects and benefits of the writ of preliminary injunction issued pursuant to the RTC Order dated 12 August 2005, respondent filed its Motion for Leave to Intervene and Admit Petition in Intervention in Civil Case No. 179-0-05.^[7] Respondent claimed in its Motion that it would also be adversely affected by the implementation of Executive Order No. 418 since it is engaged in the importation or trade of all types of motor vehicles inside the Subic Bay Freeport Zone.

In its Opposition^[8] to the Motion for Leave to Intervene, petitioners argued that respondent does not have any interest to assail Executive Order No. 418 because the latter's Certificate of Registration and Tax Exemption would disclose that it was prohibited from importing or trading used motor vehicles.

In an Order dated 22 March 2006, the RTC allowed the intervention of respondent in Civil Case No. 179-0-05 and admitted its Petition in Intervention, based on the following reasoning:

Section 1, Rule 19 of the 1997 Rules of Civil Procedure outlines the qualifications of persons who may intervene. The would-be intervenor must show that it has a legal interest on the matter in litigation or in the success of either of the parties or an interest against both as it would be adversely affected by a distribution or disposition of the property in custody of the court or an officer thereof.

After a careful evaluation of the allegations in the petition in intervention and the various documentary evidence presented, marked and offered (Exhibits "A to G," inclusive of all sub-markings) in support of its motion with attached petition in intervention, the Court finds and so holds that the [herein respondent] was able to show to the satisfaction of the Court that it has sufficient legal interest on the matter in litigation because it is in the business of importing motor vehicles inside the Subic Bay Freeport Zone as evidenced by its

Certificate of Registration (Exhibit "A") and the accreditations issued by the Land Transportation Office as importer (Exhibit "B") and dealer (Exhibit "C"). As such, [respondent] stands to be substantially and adversely affected by the implementation of Executive Order No. 418 considering that the principal activity of the company was the importation of used motor vehicles that comprised 98% of its income (Exhibits "G, G-1 and G-2"). Furthermore, the intervention of the [respondent] will not unduly delay or prejudice the rights of the original parties and although its rights may be protected in a separate proceedings, it is better and more prudent to just include the [respondent] in the instant action if only to avoid multiplicity of suits. Finally, the Court takes judicial notice of the decision of the Supreme Court as reported in the different newspapers of February 23, 2006 where the High Court ruled that the ban under Executive Order 156 applies only to the customs territory outside the presently secured fenced-in former Subic Naval Base area known as Subic Bay Freeport Zone. Hence, the exclusion found in Article 1 of the Certificate of Registration of the would-be-intervenor that states "excluding used motor vehicles in EO 156," finds no more application for having been rendered moot and academic.

The RTC thus decreed:

WHEREFORE, foregoing considered, the subject motion is hereby GRANTED and the attached Petition in Intervention is admitted. The [herein respondent] Northeast Freight Forwarders Inc. is now considered a party-petitioner and [herein petitioners] are given fifteen (15) days from receipt hereof to file their Answer to the Petition in Intervention.^[9]

Petitioners filed with the Court of Appeals a Petition for *Certiorari*, docketed as CA-G.R. SP No. 94646, averring that the RTC committed grave abuse of discretion in issuing its 22 March 2006 Order. In its Decision dated 6 February 2007, the Court of Appeals held:

The established rule is that the constitutionality of law can be challenged by one who will sustain a direct injury as a result of its enforcement. We find that said rule is established in so far as [herein respondent] is concerned. Executive Order No. 418 as noted above expressly imposes additional specific duty in the amount of P500,000.00 for each used motor vehicle imported into the country. A careful perusal of the certificate of registration and tax exemption, specifically Article 1 thereof, of [respondent], Northeast Freight Forwarders, Inc., would show that [respondent], Northeast Freight Forwarders, Inc., is authorized to import or export all types of motor vehicles, excluding used motor vehicle in accordance with E.O. No. 156. Thus, we find that herein private respondent is authorized to import or trade used motor vehicle, but not those used motor vehicle in accordance with E.O. No. 156. What E.O. No. 156 prohibits is the importation of used motor vehicles into the Philippine territory outside the secured fenced-in former Subic Naval Base area. Used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of

the Philippine territory. Thus, used motor vehicles imported and/or traded by [respondent] *via* the secured fenced-in former Subic Naval Base area would therefore be subjected to the additional specific duty in the amount of P500,000.00 imposed by E.O. No. 418. Undoubtedly, [respondent] has the legal interest to assail the validity of E.O. No. 418 because [respondent] would definitely suffer a direct injury from the implementation of E.O. No. 418. The intervention, therefore, of [respondent] in Civil Case No. 179-0-05 is proper.

Based on the foregoing consideration, therefore, the Court finds no grave abuse of discretion attending the RTC's ruling, the same being supported by the attendant circumstances and applicable law.

The *fallo* of the Decision of the appellate court reads:

WHEREFORE, premises considered, the instant petition for certiorari is hereby DISMISSED for lack of merit.^[10]

The Motion for Reconsideration^[11] of petitioners was denied^[12] by the Court of Appeals in its Resolution dated 4 September 2007.

Hence, the instant Petition assigning the following lone error:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ORDER OF THE LOWER COURT BECAUSE RESPONDENT HAS NO LEGAL INTEREST IN THE MATTER IN LITIGATION.^[13]

Section 1, Rule 19 of the 1997 Rules of Civil Procedure, as amended, provides for the parameters in which a person, not originally a party to the case, may intervene:

SECTION 1. *Who may intervene.* -- A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and

immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."^[14]

To allow intervention, (a) it must be shown that the movant has legal interest in the matter in litigation, or is otherwise qualified; and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.^[15]

The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. The permissive term of the rules shows the intention to give to the court the full measure of discretion in permitting or disallowing intervention.^[16]

Guided by the foregoing rules and jurisprudence, this Court agrees in the finding of the Court of Appeals that the RTC did not commit grave abuse of discretion in granting the Motion for Leave to Intervene and Admit the Petition in Intervention of respondent.^[17]

According to Certificate of Registration No. 2002-0030 dated 12 December 2002^[18] issued by Subic Bay Metropolitan Authority, respondent was authorized to engage in the following business:

ARTICLE 1. The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of international freight and cargo forwarding, break bulk agents, customs brokerage, warehousing, storing, import/export, packaging, crating of merchandise, goods, wares and commodities in SBF; **transshipment, assembling, trading, distributing, marketing at wholesale insofar as maybe permitted by law,** goods and general merchandise of every kind and description including but not limited to, food products or commodities, **all types of motor vehicles (excluding used motor vehicle in accordance [with] E.O. 156)** including but not limited to trucks, buses, light/heavy industrial/agricultural/construction machineries and equipment, parts and accessories, branch new motorcycles, accessories and parts, generators, and the like, bicycles and parts, watercrafts and equipment, electronics/computer/telecommunications products, parts and accessories, textiles and other liberalized products as related thereto from Building No. 8474, Argonaut Highway, Subic Gate, Subic Bay Freeport Zone.

(Emphases supplied.)

Petitioners base their argument on the fact that respondent has no legal interest to intervene in Civil Case No. 179-0-05, as the latter's Certificate of Registration states that respondent is allowed to transship, assemble, trade, distribute, and market by wholesale "all types of motor vehicles (excluding used motor vehicles in accordance with Executive Order No. 156)." By virtue of this phrase, petitioners assert that respondent is prohibited from importing and trading used motor vehicles. And since Executive Order No. 418, being challenged in Civil Case No. 179-0-05, imposes additional specific duty on imported used motor vehicles, which respondent is not permitted to import or trade, then respondent had no legal interest to intervene in said case.

The interpretation by petitioners of the Certificate of Registration of respondent is myopic. Petitioners completely ignore the fact that the phrase "excluding used motor vehicles" is qualified by the words "in accordance with Executive Order No. 156." Hence, the extent of the prohibition on trading used motor vehicles imposed upon respondent could only be determined in relation to Executive Order No. 156.

Executive Order No. 156, entitled, "Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and Its Implementing Guidelines," was issued by President Gloria Macapagal-Arroyo on 12 December 2002. Under Article 2 thereof can be found the following controversial provisions:

3.1 The importation into the country, **inclusive of the Freeport**, of all types of used motor vehicles is prohibited, except for the following:

3.1.1 A vehicle that is owned and for the personal use of a returning resident or immigrant and covered by an authority to import issued under the No-dollar Importation Program. Such vehicles cannot be resold for at least three (3) years;

3.1.2 A vehicle for the use of an official of the Diplomatic Corps and authorized to be imported by the Department of Foreign Affairs.

3.1.3 Trucks excluding pick-up trucks;

1. with GVW of 2.5-6.0 tons covered by an authority to import issued by the DTI.
2. with GVW above 6.0 tons.

3.1.4 Buses:

1. with GVW of 6-12 tons covered by an authority to import issued by DTI;

2. with GVW above 12 tons.

3.1.5 Special purpose vehicles:

1. fire trucks
2. ambulances
3. funeral hearses/coaches
4. crane lorries
5. tractor heads or truck tractors
6. boom trucks
7. tanker trucks
8. tank lorries with high pressure spray gun
9. reefers or refrigerated trucks
10. mobile drilling derricks
11. transit/concrete mixers
12. mobile radiological units
13. wreckers or tow trucks
14. concrete pump trucks
15. aerial/bucket flat-form trucks
16. street sweepers
17. vacuum trucks
18. garbage compactors
19. self loader trucks
20. man lift trucks
21. lighting trucks

22. trucks mounted with special purpose equipment
23. all other types of vehicles designed for a specific use.
(Emphasis ours.)

When the constitutionality of Executive Order No. 156 was challenged by importers and traders of used cars in the Subic Bay Freeport Zone, the Court ruled in *Executive Secretary v. Southwing Heavy Industries, Inc.* ^[19] in this wise:

In sum, the Court finds that **Article 2, Section 3.1 of Executive Order No. 156 is void insofar as it is made applicable to the presently secured fenced-in former Subic Naval Base area** as stated in Section 1.1 of Executive Order No. 97-A. Pursuant to the separability clause of Executive Order No. 156, Section 3.1 is declared valid insofar as it applies to the customs territory or the Philippine territory outside the presently secured fenced-in former Subic Naval Base area as stated in Section 1.1 of Executive Order No. 97-A. **Hence, used motor vehicles that come into the Philippine territory via the secured fenced-in former Subic Naval Base area may be stored, used or traded therein, or exported out of the Philippine territory, but they cannot be imported into the Philippine territory outside of the secured fenced-in former Subic Naval Base area.** (Emphases supplied.)

Based on *Southwing*, Executive Order No. 156 can only prohibit importation of used motor vehicles into the customs territory or the Philippine territory outside the secured and fenced-in Subic Bay Freeport Zone. The prohibition, however, does not cover the importation of used motor vehicles into the Subic Bay Freeport Zone, for as long as they are stored, used, and traded within the Zone or exported to other countries. In other words, used motor vehicles may be imported into the Subic Bay Freeport Zone on the condition that they shall not be brought out of the Zone into the customs territory. ^[20]

The prohibition on trading used motor vehicles imposed upon respondent in its Certificate of Registration should be interpreted in the light of the foregoing. In accordance with Executive Order No. 156, respondent may import into and trade used motor vehicles within the Subic Bay Freeport Zone, but it cannot bring the same into customs territory. Being engaged in the importation and trading of used motor vehicles, even in this limited sense, respondent has legal interest, actual and material, in the subject matter of Civil Case No. 179-0-05: the legality and constitutionality of Executive Order No. 418, which imposes the additional specific duty of P500,000.00 on the importation of used motor vehicles.

Significantly, the Certificate of Registration of respondent is similar to the Certificates of Registration of some of the Subic enterprises that originally filed the Petition in Civil Case No. 179-0-05.

The Certificate of Registration of Unitrans Subic Ventures Corp. dated 18 June 2003 reads:

ARTICLE I The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of import/export, marketing, selling, warehousing, transshipment and trading of general merchandise including industrial, heavy equipment, agricultural machinery, all terrain vehicles (ATV), light/heavy trucks, automotive spare parts, brand new motorcycles and other liberalized items, **excluding used cars unless those for use within the Freeport and those for transshipment, subject to all applicable laws, executive orders, and such** rules and regulations as may be imposed by the Authority from Vacant Lot (beside Enron), Causeway Extension, Subic Bay Freeport Zone.^[21] (Emphasis ours.)

The Certificate of Registration dated 22 October 2004 of JJB Century International Ventures Corporation also provides:

ARTICLE I The Company shall be classified as a Subic Bay Freeport Enterprise, as such term is defined under Section 3, Paragraph G of the Implementing Rules, for the purpose of engaging in the business of trading of trucks, construction/heavy equipment and all types of motor vehicles **except second hand motor vehicles in accordance with E.O. 156;** importation/exportation and warehousing of general merchandise including but not limited to food products or commodities, garment and textiles, electronic and computer products, plastic products, metal/steel products and scraps, motor vehicle parts and accessories, agricultural products and agricultural inputs, fisheries products and its inputs, industrial machineries and its inputs, marine equipments and its inputs and petroleum products and its inputs, shipper consolidation door to door operation and forwarding from Building No. 54-A, Innovative Street, SBIP Phase I, Subic Bay Freeport Zone.^[22] (Emphasis ours.)

Evidently, respondent is similarly situated as the Subic enterprises that instituted Civil Case No. 179-0-05, and would be prejudiced in much the same way as the said Subic enterprises with the implementation of Executive Order No. 418. Respondent should be allowed to intervene in Civil Case No. 179-0-05 so it could be accorded equal favor as the Subic enterprises before the law and, if the contrary so warrants, suffer equally the brunt of the same law.

Since petitioners focus on the argument that respondent may not intervene in Civil Case No. 179-0-05 on the ground that it has no legal interest therein, petitioners do not allege or present any evidence that the adjudication of the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced with the intervention of respondent, or that the rights of respondent may be protected in a separate proceeding. Hence, the Court finds no basis for saying that the rights of the original parties to Civil Case No. 179-0-05 shall be delayed or prejudiced by the intervention of respondent. The intervention of respondent in Civil Case No. 179-0-05 even appears to this Court to be more beneficial and convenient for petitioners, because they would only have to defend the constitutionality of Executive

Order No. 418 in one case and forum. Finally, given the closely related, if not exactly similar, causes of action of respondent and the Subic enterprises against petitioners, the admission of the Petition for Intervention of respondent in Civil Case No. 179-0-05 would avoid multiplicity of suits and clogging of the dockets of the courts.^[23]

Therefore, like the Court of Appeals, this Court finds no improvident exercise of discretion by the RTC when it allowed the intervention of the respondent in Civil Case No. 179-0-05.

Wherefore, premises considered, the Petition is **Denied** for lack of merit, and the Decision dated 6 February 2007 and Resolution dated 4 September 2007 of the Court of Appeals in CA-G.R. SP No. 94646 are **Affirmed**. No costs.

SO ORDERED.

*Quisumbing**, *Ynares-Santiago*, (*Chairperson*), *Carpio***, and *Peralta, JJ.*, concur.

* Associate Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura, per raffle dated 19 November 2007.

** Per Special Order No. 568, dated 12 February 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Antonio T. Carpio to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave under the Court's Wellness Program.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 34-38.

[2] *Rollo*, p. 39.

[3] *Id.* at 84-85.

[4] SEC. 104. Rates of Import Duty.

All Tariff Sections, Chapters, headings and subheadings and the rates of import duty under Section 104 of Presidential Decree No. 34 and all subsequent amendment issues under Executive Orders and Presidential Decrees are hereby adopted and form part of this Code.

There shall be levied, collected, and paid upon all imported articles the rates of duty indicated in the Section under this section except as otherwise specifically provided for in this Code: Provided, that, the maximum rate shall not exceed one hundred *per cent ad valorem*.

The rates of duty herein provided or subsequently fixed pursuant to Section four hundred one of this Code shall be subject to periodic investigation by the Tariff Commission and may be revised by the President upon recommendation of the National Economic and Development Authority.

The rates of duty herein provided shall apply to all products whether imported directly or indirectly of all foreign countries, which do not discriminate against Philippine export products. An additional 100% across-the-board duty shall be levied on the products of any foreign country which discriminates against Philippine export products.

[5] Records, Vol. I, pp. 1-3.

[6] *Rollo*, p. 51.

[7] *Id.* at 55.

[8] *Id.* at 75.

[9] *Id.* at 84-85.

[10] *Id.* at 38.

[11] *CA rollo*, p. 117.

[12] *Id.* at 132.

[13] *Rollo*, p. 162.

[14] *Gibson v. Revilla*, 180 Phil. 645, 657 (1979).

[15] *Saw v. Court of Appeals*, G.R. No. 90580, 8 April 1991, 195 SCRA 740, 745.

[16] *Heirs of Geronimo Restrivera v. De Guzman*, G.R. No.146540, 14 July 2004, 434 SCRA 456, 463.

[17] *Nieto, Jr. v. Court of Appeals*, G.R. No. 166984, 7 August 2007, 529 SCRA 285, 305.

[18] *Rollo*, p. 71.

[19] G.R. No.164171, 20 February 2006, 482 SCRA 673, 703.

[20] Republic Act No. 7227 or the Bases Conversion and Development Act defines Customs Territory as "that portion of the Philippines outside the Subic Bay Freeport where the Tariff and Customs Code of the Philippines and other national tariff and customs law are in force and effect."

[21] *CA rollo*, p. 71.

[22] *Id.* at 77.

[23] *Spouses De Vera v. Hon. Agloro*, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 218.