

562 Phil. 187

EN BANC

[G.R. No. 168584, October 15, 2007]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE HONORABLE SECRETARY OF FINANCE, THE HONORABLE COMMISSIONER OF BUREAU OF INTERNAL REVENUE, THE HONORABLE COMMISSIONER OF CUSTOMS, AND THE COLLECTOR OF CUSTOMS OF THE PORT OF SUBIC, PETITIONERS, VS. HON. RAMON S. CAGUIOA, PRESIDING JUDGE, BRANCH 74, RTC, THIRD JUDICIAL REGION, OLONGAPO CITY, INDIGO DISTRIBUTION CORP., HEREIN REPRESENTED BY ARIEL G. CONSOLACION, W STAR TRADING AND WAREHOUSING CORP., HEREIN REPRESENTED BY HIERYN R. ECLARINAL, FREEDOM BRANDS PHILS., CORP., HEREIN REPRESENTED BY ANA LISA RAMAT, BRANDED WAREHOUSE, INC., HEREIN REPRESENTED BY MARY AILEEN S. GOZUN, ALTASIA INC., HEREIN REPRESENTED BY ALAN HARROW, TAINAN TRADE (TAIWAN), INC., HEREIN REPRESENTED BY ELENA RANULLO, SUBIC PARK N' SHOP, HEREIN REPRESENTED BY NORMA MANGALINO DIZON, TRADING GATEWAYS INTERNATIONAL PHILS., HEREIN REPRESENTED BY MA. CHARINA FE C. RODOLFO, DUTY FREE SUPERSTORE (DFS), HEREIN REPRESENTED BY RAJESH R. SADHWANI, CHJIMES TRADING INC., HEREIN REPRESENTED BY ANGELO MARK M. PICARDAL, PREMIER FREEPORT, INC., HEREIN REPRESENTED BY ROMMEL P. GABALDON, FUTURE TRADE SUBIC FREEPORT, INC., HEREIN REPRESENTED BY WILLIE S. VERIDIANO, GRAND COMTRADE INTERNATIONAL CORP., HEREIN REPRESENTED BY JULIUS MOLINDA, AND FIRST PLATINUM INTERNATIONAL, INC., HEREIN REPRESENTED BY ISIDRO M. MUÑOZ, RESPONDENTS.

DECISION

CARPIO MORALES, J.:

Petitioners seek via petition for certiorari and prohibition to annul (1) the May 4, 2005

Order^[1] issued by public respondent Judge Ramon S. Caguioa of the Regional Trial Court (RTC), Branch 74, Olongapo City, granting private respondents' application for the issuance of a writ of preliminary injunction and (2) the Writ of Preliminary Injunction^[2] that was issued pursuant to such Order, which stayed the implementation of Republic Act (R.A.) No. 9334, AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142, 143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

Petitioners likewise seek to enjoin, restrain and inhibit public respondent from enforcing the impugned issuances and from further proceeding with the trial of Civil Case No. 102-0-05.

The relevant facts are as follows:

In 1992, Congress enacted Republic Act (R.A) No. 7227^[3] or the Bases Conversion and Development Act of 1992 which, among other things, created the Subic Special Economic and Freeport Zone (SBF^[4]) and the Subic Bay Metropolitan Authority (SBMA).

R.A. No. 7227 envisioned the SBF to be developed into a "self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments."^[5] In line with this vision, Section 12 of the law provided:

(b) 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;

(c) 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.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter;

(d) No exchange control policy shall be applied and free markets for foreign exchange, gold, securities and future shall be allowed and maintained in the Subic Special Economic Zone;

(e) The Central Bank, through the Monetary Board, shall supervise and regulate the operations of banks and other financial institutions within the Subic Special Economic Zone;

(f) Banking and finance shall be liberalized with the establishment of foreign currency depository units of local commercial banks and offshore banking units of foreign banks with minimum Central Bank regulation;

(g) Any investor within the Subic Special Economic Zone whose continuing investment shall not be less than Two hundred fifty thousand dollars (\$250,000), his/her spouse and dependent children under twenty-one (21) years of age, shall be granted permanent resident status within the Subic Special Economic Zone. They shall have freedom of ingress and egress to and from the Subic Special Economic Zone without any need of special authorization from the Bureau of Immigration and Deportation. The Subic Bay Metropolitan Authority referred to in Section 13 of this Act may also issue working visas renewal every two (2) years to foreign executives and other aliens possessing highly-technical skills which no Filipino within the Subic Special Economic Zone possesses, as certified by the Department of Labor and Employment. The names of aliens granted permanent residence status and working visas by the Subic Bay Metropolitan Authority shall be reported to the Bureau of Immigration and Deportation within thirty (30) days after issuance thereof;

x x x x. (Emphasis supplied)

Pursuant to the law, private respondents Indigo Distribution Corporation, W Star Trading and Warehousing Corporation, Freedom Brands Philippines Corporation, Branded Warehouse, Inc., Altasia, Inc., Tainan Trade (Taiwan) Inc., Subic Park `N Shop,

Incorporated, Trading Gateways International Philippines, Inc., Duty Free Superstore (DFS) Inc., Chijmes Trading, Inc., Premier Freeport, Inc., Future Trade Subic Freeport, Inc., Grand Comtrade Int'l., Corp., and First Platinum International, Inc., which are all domestic corporations doing business at the SBF, applied for and were granted Certificates of Registration and Tax Exemption^[6] by the SBMA.

These certificates allowed them to engage in the business either of trading, retailing or wholesaling, import and export, warehousing, distribution and/or transshipment of general merchandise, including alcohol and tobacco products, and uniformly granted them tax exemptions for such importations as contained in the following provision of their respective Certificates:

ARTICLE IV. The Company shall be entitled to tax and duty-free importation of raw materials, capital equipment, and household and personal items for use solely within the Subic Bay Freeport Zone pursuant to Sections 12(b) and 12(c) of the Act and Sections 43, 45, 46 and 49 of the Implementing Rules. All importations by the Company are exempt from inspection by the *Societe Generale de Surveillance* if such importations are delivered immediately to and for use solely within the Subic Bay Freeport Zone. (Emphasis supplied)

Congress subsequently passed R.A. No. 9334, however, effective on January 1, 2005,^[7] Section 6 of which provides:

Sec. 6. Section 131 of the National Internal Revenue Code of 1977, as amended, is hereby amended to read as follows:

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

(A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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 Economic Freeport Zone, created under Republic Act No. 7227; x x x 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: x x x 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. x x x. (Emphasis and underscoring supplied)

On the basis of Section 6 of R.A. No. 9334, SBMA issued on January 10, 2005 a Memorandum^[8] declaring that effective January 1, 2005, all importations of cigars, cigarettes, distilled spirits, fermented liquors and wines into the SBF, including those intended to be transshipped to other free ports in the Philippines, shall be treated as ordinary importations subject to all applicable taxes, duties and charges, including excise taxes.

Meanwhile, on February 3, 2005, former Bureau of Internal Revenue (BIR) Commissioner Guillermo L. Parayno, Jr. requested then Customs Commissioner George M. Jereos to immediately collect the excise tax due on imported alcohol and tobacco products brought to the Duty Free Philippines (DFP) and Freeport zones.^[9]

Accordingly, the Collector of Customs of the port of Subic directed the SBMA Administrator to require payment of all appropriate duties and taxes on all importations of cigars and cigarettes, distilled spirits, fermented liquors and wines; and for all transactions involving the said items to be covered from then on by a consumption entry and no longer by a warehousing entry.^[10]

On February 7, 2005, SBMA issued a Memorandum^[11] directing the departments concerned to require locators/importers in the SBF to pay the corresponding duties and taxes on their importations of cigars, cigarettes, liquors and wines before said items are cleared and released from the freeport. However, certain SBF locators which were "exclusively engaged in the transshipment of cigarette products for foreign destinations" were allowed by the SBMA to process their import documents subject to their submission

of an Undertaking with the Bureau of Customs.^[12]

On February 15, 2005, private respondents wrote the offices of respondent Collector of Customs and the SBMA Administrator requesting for a reconsideration of the directives on the imposition of duties and taxes, particularly excise taxes, on their shipments of cigars, cigarettes, wines and liquors.^[13] Despite these letters, however, they were not allowed to file any warehousing entry for their shipments.

Thus, private respondent enterprises, through their representatives, brought before the RTC of Olongapo City a special civil action for declaratory relief^[14] to have certain provisions of R.A. No. 9334 declared as unconstitutional, which case was docketed as Civil Case No. 102-0-05.

In the main, private respondents submitted that (1) R.A. No. 9334 should not be interpreted as altering, modifying or amending the provisions of R.A. No. 7227 because repeals by implication are not favored; (2) a general law like R.A. No. 9334 cannot amend R.A. No. 7727, which is a special law; and (3) the assailed law violates the one bill-one subject rule embodied in Section 26(1), Article VI^[15] of the Constitution as well as the constitutional proscription against the impairment of the obligation of contracts.^[16]

Alleging that great and irreparable loss and injury would befall them as a consequence of the imposition of taxes on alcohol and tobacco products brought into the SBF, private respondents prayed for the issuance of a writ of preliminary injunction and/or Temporary Restraining Order (TRO) and preliminary mandatory injunction to enjoin the directives of herein petitioners.

Petitioners duly opposed the private respondents' prayer for the issuance of a writ of preliminary injunction and/or TRO, arguing that (1) tax exemptions are not presumed and even when granted, are strictly construed against the grantee; (2) an increase in business expense is not the injury contemplated by law, it being a case of *damnum absque injuria*; and (3) the drawback mechanism established in the law clearly negates the possibility of the feared injury.^[17]

Petitioners moreover pointed out that courts are enjoined from issuing a writ of injunction and/or TRO on the grounds of an alleged nullity of a law, ordinance or administrative regulation or circular or in a manner that would effectively dispose of the main case. Taxes, they stressed, are the lifeblood of the government and their prompt and certain availability is an imperious need. They maintained that greater injury would be inflicted on the public should the writ be granted.

On May 4, 2005, the court *a quo* granted private respondents' application for the issuance

of a writ of preliminary injunction, after it found that the essential requisites for the issuance of a preliminary injunction were present.

As investors duly licensed to operate inside the SBF, the trial court declared that private respondents were entitled to enjoy the benefits of tax incentives under R.A. No. 7227, particularly the exemption from local and national taxes under Section 12(c); the aforesaid provision of R.A. No. 7227, coupled with private respondents' Certificates of Registration and Tax Exemption from the SBMA, vested in them a clear and unmistakable right or right *in esse* that would be violated should R.A. No. 9334 be implemented; and the invasion of such right is substantial and material as private respondents would be compelled to pay more than what they should by way of taxes to the national government.

The trial court thereafter ruled that the *prima facie* presumption of validity of R.A. No. 9334 had been overcome by private respondents, it holding that as a partial amendment of the National Internal Revenue Code (NIRC) of 1997,^[18] as amended, R.A. No. 9334 is a general law that could not prevail over a special statute like R.A. No. 7227 notwithstanding the fact that the assailed law is of later effectivity.

The trial court went on to hold that the repealing provision of Section 10 of R.A. No. 9334 does not expressly mention the repeal of R. A. No. 7227, hence, its repeal can only be an implied repeal, which is not favored; and since R.A. No. 9334 imposes new tax burdens, whatever doubts arising therefrom should be resolved against the taxing authority and in favor of the taxpayer.

The trial court furthermore held that R.A. No. 9334 violates the terms and conditions of private respondents' subsisting contracts with SBMA, which are embodied in their Certificates of Registration and Exemptions in contravention of the constitutional guarantee against the impairment of contractual obligations; that greater damage would be inflicted on private respondents if the writ of injunction is not issued as compared to the injury that the government and the general public would suffer from its issuance; and that the damage that private respondents are bound to suffer once the assailed statute is implemented - including the loss of confidence of their foreign principals, loss of business opportunity and unrealized income, and the danger of closing down their businesses due to uncertainty of continued viability - cannot be measured accurately by any standard.

With regard to the rule that injunction is improper to restrain the collection of taxes under Section 218^[19] of the NIRC, the trial court held that what is sought to be enjoined is not *per se* the collection of taxes, but the implementation of a statute that has been found preliminarily to be unconstitutional.

Additionally, the trial court pointed out that private respondents' taxes have not yet been assessed, as they have not filed consumption entries on all their imported tobacco and

alcohol products, hence, their duty to pay the corresponding excise taxes and the concomitant right of the government to collect the same have not yet materialized.

On May 11, 2005, the trial court issued a Writ of Preliminary Injunction directing petitioners and the SBMA Administrator as well as all persons assisting or acting for and in their behalf "1) to allow the operations of [private respondents] in accordance with R.A. No. 7227; 2) to allow [them] to file warehousing entries instead of consumption entries as regards their importation of tobacco and alcohol products; and 3) to cease and desist from implementing the pertinent provisions of R.A. No. 9334 by not compelling [private respondents] to immediately pay duties and taxes on said alcohol and tobacco products as a condition to their removal from the port area for transfer to the warehouses of [private respondents]."^[20]

The injunction bond was approved at One Million pesos (P1,000,000).^[21]

Without moving for reconsideration, petitioners have come directly to this Court to question the May 4, 2005 Order and the Writ of Preliminary Injunction which, they submit, were issued by public respondent with grave abuse of discretion amounting to lack or excess of jurisdiction.

In particular, petitioners contend that public respondent peremptorily and unjustly issued the injunctive writ despite the absence of the legal requisites for its issuance, resulting in heavy government revenue losses.^[22] They emphatically argue that since the tax exemption previously enjoyed by private respondents has clearly been withdrawn by R.A. No. 9334, private respondents do not have any right *in esse* nor can they invoke legal injury to stymie the enforcement of R.A. No. 9334.

Furthermore, petitioners maintain that in issuing the injunctive writ, public respondent showed manifest bias and prejudice and prejudged the merits of the case in utter disregard of the caveat issued by this Court in *Searth Commodities Corporation, et al. v. Court of Appeals*^[23] and *Vera v. Arca*.^[24]

Regarding the P1 million injunction bond fixed by public respondent, petitioners argue that the same is grossly disproportionate to the damages that have been and continue to be sustained by the Republic.

In their Reply^[25] to private respondents' Comment, petitioners additionally plead public respondent's bias and partiality in allowing the motions for intervention of a number of corporations^[26] without notice to them and in disregard of their present pending petition for certiorari and prohibition before this Court. The injunction bond filed by private respondent Indigo Distribution Corporation, they stress, is not even sufficient to cover all

the original private respondents, much less, intervenor-corporations.

The petition is partly meritorious.

At the outset, it bears emphasis that only questions relating to the propriety of the issuance of the May 4, 2005 Order and the Writ of Preliminary Injunction are properly within the scope of the present petition and shall be so addressed in order to determine if public respondent committed grave abuse of discretion. The arguments raised by private respondents which pertain to the constitutionality of R.A. No. 9334 subject matter of the case pending litigation before the trial court have no bearing in resolving the present petition.

Section 3 of Rule 58 of the Revised Rules of Court provides:

SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted when it is established.

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

For a writ of preliminary injunction to issue, the plaintiff must be able to establish that (1) there is a clear and unmistakable right to be protected, (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.^[27]

Conversely, failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction.^[28]

It is beyond cavil that R.A. No. 7227 granted private respondents exemption from local and national taxes, including excise taxes, on their importations of general merchandise, for which reason they enjoyed tax-exempt status until the effectivity of R.A. No. 9334.

By subsequently enacting R.A. No. 9334, however, Congress expressed its intention to withdraw private respondents' tax exemption privilege on their importations of cigars, cigarettes, distilled spirits, fermented liquors and wines. Juxtaposed to show this intention are the respective provisions of Section 131 of the NIRC before and after its amendment by R.A. No. 9334:

Sec. 131 of NIRC before R.A. No. 9334

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

(A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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

Sec. 131, as amended by R.A. No. 9334

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

(A) Persons Liable. - Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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

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, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Economic 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, 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, 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 labeled "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 Nos. 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.

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 Economic 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 "tax and 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.

X X X X.

X X X X.

(Emphasis and underscoring supplied)

To note, the old Section 131 of the NIRC expressly provided that all taxes, duties, charges, including excise taxes shall *not apply* to importations of cigars, cigarettes, fermented spirits and wines brought directly into the duly chartered or legislated freeports of the SBF.

On the other hand, Section 131, as amended by R.A. No. 9334, now provides that such taxes, duties and charges, including excise taxes, shall *apply* to importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the SBF.

Without necessarily passing upon the validity of the withdrawal of the tax exemption privileges of private respondents, it behooves this Court to state certain basic principles and observations that should throw light on the propriety of the issuance of the writ of preliminary injunction in this case.

First. Every presumption must be indulged in favor of the constitutionality of a statute.^[29] The burden of proving the unconstitutionality of a law rests on the party assailing the law.^[30] In passing upon the validity of an act of a co-equal and coordinate branch of the government, courts must ever be mindful of the time-honored principle that a statute is presumed to be valid.

Second. There is no vested right in a tax exemption, more so when the latest expression of legislative intent renders its continuance doubtful. Being a mere statutory privilege,^[31] a tax exemption may be modified or withdrawn at will by the granting authority.^[32]

To state otherwise is to limit the taxing power of the State, which is unlimited, plenary, comprehensive and supreme. The power to impose taxes is one so unlimited in force and so searching in extent, it is subject only to restrictions which rest on the discretion of the authority exercising it.^[33]

Third. As a general rule, tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.^[34] The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.^[35] In case of doubt, non-exemption is favored.^[36]

Fourth. A tax exemption cannot be grounded upon the continued existence of a statute which precludes its change or repeal.^[37] Flowing from the basic precept of constitutional law that no law is irrevocable, Congress, in the legitimate exercise of its lawmaking

powers, can enact a law withdrawing a tax exemption just as efficaciously as it may grant the same under Section 28(4) of Article VI^[38] of the Constitution. There is no gainsaying therefore that Congress can amend Section 131 of the NIRC in a manner it sees fit, as it did when it passed R.A. No. 9334.

Fifth. The rights granted under the Certificates of Registration and Tax Exemption of private respondents are not absolute and unconditional as to constitute rights *in esse* - those clearly founded on or granted by law or is enforceable as a matter of law.^[39]

These certificates granting private respondents a "permit to operate" their respective businesses are in the nature of licenses, which the bulk of jurisprudence considers as neither a property nor a property right.^[40] The licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure.^[41] A license can thus be revoked at any time since it does not confer an absolute right.^[42]

While the tax exemption contained in the Certificates of Registration of private respondents may have been part of the inducement for carrying on their businesses in the SBF, this exemption, nevertheless, is far from being contractual in nature in the sense that the non-impairment clause of the Constitution can rightly be invoked.^[43]

Sixth. Whatever right may have been acquired on the basis of the Certificates of Registration and Tax Exemption must yield to the State's valid exercise of police power.^[44] It is well to remember that taxes may be made the implement of the police power.^[45]

It is not difficult to recognize that public welfare and necessity underlie the enactment of R.A. No. 9334. As petitioners point out, the now assailed provision was passed to curb the pernicious practice of some unscrupulous business enterprises inside the SBF of using their tax exemption privileges for smuggling purposes. Smuggling in whatever form is bad enough; it is worse when the same is allegedly perpetrated, condoned or facilitated by enterprises hiding behind the cloak of their tax exemption privileges.

Seventh. As a rule, courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial.^[46] This rule is intended to preclude a prejudgment of the main case and a reversal of the rule on the burden of proof since by issuing the injunctive writ, the court would assume the proposition that petitioners are ineptively duty bound to prove.^[47]

Eighth. A court may issue a writ of preliminary injunction only when the petitioner assailing a statute has made out a case of unconstitutionality or invalidity strong enough, in

the mind of the judge, to overcome the presumption of validity, *in addition* to a showing of a clear legal right to the remedy sought.^[48]

Thus, it is not enough that petitioners make out a case of unconstitutionality or invalidity to overcome the *prima facie* presumption of validity of a statute; they must also be able to show a clear legal right that ought to be protected by the court. The issuance of the writ is therefore not proper when the complainant's right is doubtful or disputed.^[49]

Ninth. The feared injurious effects of the imposition of duties, charges and taxes on imported cigars, cigarettes, distilled spirits, fermented liquors and wines on private respondents' businesses cannot possibly outweigh the dire consequences that the non-collection of taxes, not to mention the unabated smuggling inside the SBF, would wreak on the government. Whatever damage would befall private respondents must perforce take a back seat to the pressing need to curb smuggling and raise revenues for governmental functions.

All told, while the grant or denial of an injunction generally rests on the sound discretion of the lower court, this Court may and should intervene in a clear case of abuse.^[50]

One such case of grave abuse obtained in this case when public respondent issued his Order of May 4, 2005 and the Writ of Preliminary Injunction on May 11, 2005^[51] despite the absence of a *clear and unquestioned legal right* of private respondents.

In holding that the presumption of constitutionality and validity of R.A. No. 9334 was overcome by private respondents for the reasons public respondent cited in his May 4, 2005 Order, he disregarded the fact that as a condition *sine qua non* to the issuance of a writ of preliminary injunction, private respondents needed also to show a *clear legal right* that ought to be protected. That requirement is not satisfied in this case.

To stress, the possibility of irreparable damage *without proof of an actual existing right* would not justify an injunctive relief.^[52]

Besides, private respondents are not altogether lacking an appropriate relief under the law. As petitioners point out in their Petition^[53] before this Court, private respondents may avail themselves of a tax refund or tax credit should R.A. No. 9334 be finally declared invalid.

Indeed, Sections 204^[54] and 229^[55] of the NIRC provide for the recovery of erroneously or illegally collected taxes which would be the nature of the excise taxes paid by private respondents should Section 6 of R.A. No. 9334 be declared unconstitutional or invalid.

It may not be amiss to add that private respondents can also opt not to import, or to import less of, those items which no longer enjoy tax exemption under R.A. No. 9334 to avoid the payment of taxes thereon.

The Court finds that public respondent had also ventured into the delicate area which courts are cautioned from taking when deciding applications for the issuance of the writ of preliminary injunction. Having ruled preliminarily against the *prima facie* validity of R.A. No. 9334, he assumed in effect the proposition that private respondents in their petition for declaratory relief were duty bound to prove, thereby shifting to petitioners the burden of proving that R.A. No. 9334 is not unconstitutional or invalid.

In the same vein, the Court finds public respondent to have overstepped his discretion when he arbitrarily fixed the injunction bond of the SBF enterprises at only P1million.

The alleged sparseness of the testimony of Indigo Corporation's representative^[56] on the injury to be suffered by private respondents may be excused because evidence for a preliminary injunction need not be conclusive or complete. Nonetheless, considering the number of private respondent enterprises and the volume of their businesses, the injunction bond is undoubtedly not sufficient to answer for the damages that the government was bound to suffer as a consequence of the suspension of the implementation of the assailed provisions of R.A. No. 9334.

Rule 58, Section 4(b) provides that a bond is executed in favor of the party enjoined to answer for *all* damages which it may sustain by reason of the injunction. The purpose of the injunction bond is to protect the defendant against loss or damage by reason of the injunction in case the court finally decides that the plaintiff was not entitled to it, and the bond is usually conditioned accordingly.^[57]

Recalling this Court's pronouncements in *Olalia v. Hizon*^[58] that:

x x x [T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it,

it cannot be overemphasized that any injunction that restrains the collection of taxes, which is the inevitable result of the suspension of the implementation of the assailed Section 6 of R.A. No. 9334, is a limitation upon the right of the government to its lifeline and wherewithal.

The power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.^[59] That the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government has been repeatedly observed. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance,^[60] every precaution must be taken not to unduly suppress it.

Whether this Court must issue the writ of prohibition, suffice it to stress that being possessed of the power to act on the petition for declaratory relief, public respondent can proceed to determine the merits of the main case. To halt the proceedings at this point may be acting too prematurely and would not be in keeping with the policy that courts must decide controversies on the merits.

Moreover, lacking the requisite proof of public respondent's alleged partiality, this Court has no ground to prohibit him from proceeding with the case for declaratory relief. For these reasons, prohibition does not lie.

WHEREFORE, the Petition is **PARTLY GRANTED**. The writ of certiorari to nullify and set aside the Order of May 4, 2005 as well as the Writ of Preliminary Injunction issued by respondent Judge Caguioa on May 11, 2005 is **GRANTED**. The assailed Order and Writ of Preliminary Injunction are hereby declared **NULL AND VOID** and accordingly **SET ASIDE**. The writ of prohibition prayed for is, however, **DENIED**.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Reyes, JJ., concur.
Nachura, J., no part.

[1] *Rollo*, pp. 57-60.

[2] *Id.* at 61; dated May 11, 2005.

[3] "An Act Accelerating the Conversion of Military Reservations Into Other Productive

Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes."

[4] This is the acronym used under the Rules and Regulations Implementing R.A. No. 7227 when referring to the Subic Special Economic and Freeport Zone under Section 12 of the Act.

[5] Section 12(a).

[6] *Rollo*, pp. 120-144.

[7] Section 11 thereof.

[8] *Rollo*, p. 333; Annex "G" of Petition for Declaratory Relief.

[9] *Id.* at 334-335; Annex "H" of Petition for Declaratory Relief.

[10] *Id.* at 336; letter dated February 4, 2005.

[11] *Id.* at 337-338.

[12] *Id.* at 339; Memorandum dated February 17, 2005. The Joint Undertaking of these enterprises, collectively calling themselves the Exclusive Transshippers of Cigarettes stated, among other things:

"1. That we will not trade any of the transshipped cigarettes inside the Freeport but will fully transship these cigarettes out immediately;

x x x x

"3. That excepting fortuitous events, justifiable reasons, and acts beyond their controls x x x, [they] will load [their] transshipped cigarettes on board the departing vessels bound for foreign destinations in 1-3 days counted from the time of the arrival of the vessel at the Subic Port;

x x x x

"5. That both the Customs Office and the Seaport shall each have copies of the TALLY SHEETS for purposes of monitoring the inventories of [their] transshipped cigarettes;

x x x x." (*Rollo*, pp. 340-342.)

[13] *Id.* at 343-350. In their separate letters to the District Collector of Customs of Subic and the SBMA Administrator, private respondents invoked the privileges accorded to them as Freeport enterprises under R.A. No. 7227 as well as the status of the SBF as a freeport which, they stressed, has been consistently recognized and upheld to be outside of the Philippine customs territory so that "goods discharged thereat are considered as not having entered the Philippine customs territory at all." They additionally emphasized that the directive for filing a consumption entry and for immediate payment of duties runs counter to the "very words and essence of R.A. [No.] 7227 and defeats the essential principle of warehousing, which forms part of the business of the SBF enterprises."

[14] *Id.* at 64-89.

[15] SEC. 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

[16] CONSTITUTION, Article II, Section 10.

[17] *Id.* at 379-389; Petitioners' Opposition dated April 11, 2005.

[18] Republic Act No. 8424.

[19] SEC. 218. **Injunction not Available to Restrain Collection of Tax.** - No court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this Code.

[20] *Id.* at 61.

[21] *Ibid.*

[22] As of the filing of the petition on July 8, 2005, petitioners reported that government revenue losses have amounted to One Hundred Forty Six Million Two Hundred Ninety Three Thousand Five Hundred Thirty-Three Pesos (P146,293,533) as shown by the certificate of the Port Collector of SBF dated July 6, 2005, which was attached to the Petition as Annex "C" (*rollo*, p. 62). According to petitioners, the Republic has lost and continues to lose at least Eighteen Million pesos (P18,000,000) for each day that the implementation of R.A. No. 9334 was and remains to be suspended (*id.* at 44).

[23] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

[24] G.R. No. L-25721, May 26, 1969, 28 SCRA 351.

[25] *Rollo*, pp. 700-709.

[26] The intervenor-corporations were identified by petitioners as Diageo Freeport Philippines, Inc., Siam Corporation, Transglobe Subic Corporation and Hundred Young Subic International, Inc. (Petitioners' Motion for Reconsideration with Prayer for Inhibition, *id.* at 711-719).

[27] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 622-623; *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, G.R. Nos. 147861 & 155252, November 18, 2005, 475 SCRA 426, 435; *Phil. Sinter Corp. v. Cagayan Elec. Power and Light Co., Inc.*, 431 Phil. 324, 335 (2002); *Philippine Ports Authority v. Court of Appeals*, G.R. Nos. 115786-87, February 5, 1996, 323 Phil. 260, 291.

[28] *Rosauro v. Cuneta*, G.R. No. L-69854, June 30, 1987, 151 SCRA 570, 575.

[29] *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, 68; *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, G.R. No. 49529, March 31, 1989, 171 SCRA 501 508; *Citizens' Alliance for Consumer Protection v. Energy Regulatory Board*, G.R. Nos. 78888-90, June 23, 1988, 162 SCRA 521, 539; *Lozano v. Martinez*, 230 Phil. 406, 418 (1986).

[30] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 348.

[31] *United Paracale Mining Co. v. De la Rosa*, G.R. Nos. 63786-87, April 7, 1993, 221 SCRA 108, 115.

[32] *Supra*; *Abakada Guro Party List Officers v. Ermita*, G.R. Nos. 168056, 168207, 168461 and 168463, September 1, 2005, 469 SCRA 1, 134.

[33] *Tio v. Videogram Regulatory Board*, G.R. No. L-75697, June 18, 1987, 151 SCRA 208, 215.

[34] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005, 451 SCRA 132, 152; *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 447 Phil. 571, 584 (2003); *Commissioner of Internal Revenue v. Arnoldus Carpentry Shop, Inc.*, G.R. No. L-71122, March 25, 1988, 159 SCRA 199, 210; *City of Baguio v. Busuego*, L-29772, September 18, 1980, 100 SCRA 116, 123.

[35] *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 8, 1992, 208 SCRA 727, 753.

[36] *Benguet Corporation v. Central Board of Assessment Appeals*, G.R. No. 100959, June 29, 1992, 210 SCRA 579, 587.

[37] *Commissioner of Internal Revenue v. Court of Appeals*, February 6, 1997, citing *Asociacion de Agricultores de Talisay-Silay, Inc. v. Talisay-Silay Milling Co., Inc.*, 88 SCRA 294, 452.

[38] Sec. 28 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.

[39] *Boncodin v. NECU*, supra note 27 at 623.

[40] *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534,560; *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811-812.

[41] *Chavez v. Romulo*, supra at 562.

[42] Supra.

[43] *Manila Electric Company v. Province of Laguna*, 366 Phil. 428, 438 (1999).

[44] *Vide Kabling v. National Housing Authority*, G.R. No. L-57424, December 18, 1987, 156 SCRA 623, 628; *Victoriano v. Elizalde Rope Workers Union*, G.R. No. L-25246, September 12, 1974, 59 SCRA 54, 69-70; *Alalayan v. National Power Corporation*, G.R. No. L-24396, July 29, 1968, 24 SCRA 172, 187-188.

[45] *Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 711; *Caltex Philippines, Inc. v. Commission on Audit*, supra note 35 at 756; *Philippine Airlines, Inc. v. Edu*, G.R. No. L-41383, August 15, 1988, 164 SCRA 320, 328; *Gaston v. Republic Planters Bank*, G.R. No. L-77194, March 15, 1988, 158 SCRA 626, 632; *Lutz v. Araneta*,

98 Phil. 148, 151-152 (1955).

[46] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 145; *Rivas v. Securities and Exchange Commission*, G.R. No. 53772, October 4, 1990, 190 SCRA 295, 305 citing *Ortigas & Co. Ltd. Partnership v. CA*, G.R. No. L-79128, June 16, 1988, 162 SCRA 165, 169; *Government Service and Insurance System v. Florendo*, G.R. No. 48603, September 29, 1989, 178 SCRA 76, 87.

[47] *Rivas v. Securities and Exchange Commission*, supra.

[48] *Metropolitan Manila Development Authority v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*, G.R. No. 167514, October 25, 2005, 474 SCRA 331, 341, citing *Filipino Metals Corporation v. Secretary of Department of Trade and Industry*, G.R. No. 157498, July 15, 2005, 463 SCRA 616, 624; *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II*, supra note 29; *Tablarin v. Gutierrez*, G.R. No. L-78164, July 31, 1987, 152 SCRA 731, 737.

[49] *Boncodin v. NECU*, note 27; *Selegna Management and Development Corporation v. United Coconut Planters Bank*, supra note 46.

[50] *Searth Commodities Corporation, et al. v. Court of Appeals*, supra note 23 at 628; *S & A Gaisano Incorporated v. Hidalgo*, G.R. No. 80397, December 10, 1990, 192 SCRA 224, 229; *Genoblazo v. Court of Appeals*, G.R. No. 79303, June 20, 1989, 174 SCRA 124, 133.

[51] *Vide Boncodin v. NECU*, supra note 27 at 623.

[52] *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681, 694.

[53] *Rollo*, p. 25.

[54] SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. - The Commissioner may -

X X X X

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, X X X.

X X X X

[55] SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or nor such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such tax appears clearly to have been erroneously paid.

[56] Only Ariel G. Consolacion, Indigo Corporation's vice president, testified for all the private respondents herein.

[57] *Paramount Insurance Corporation v. Court of Appeals*, 369 Phil. 641, 653 (1999); *Valencia v. Court of Appeals*, 331 Phil. 590, 607 (1996).

[58] G.R. No. 87913, May 6, 1991, 196 SCRA 665, 672-673.

[59] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 248 (2003).

[60] *Marcos v. Court of Appeals*, 339 Phil. 253, 263 (1997); *Northern Lines, Inc. v. Court of Tax Appeals*, G.R. No. L-41376-77, June 29, 1988, 163 SCRA 25, 37-38; *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue*, G.R. No. L-26911, January 27, 1981, 102 SCRA 246, 262; *Vera v. Fernandez*, G.R. No. L-31364, March 30, 1979, 89 SCRA 199, 204; *Commissioner of Internal Revenue v. Pineda*, G.R. No. L-22734, September 15, 1967, 21 SCRA 105, 110.