



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated September 29, 2021 which reads as follows:*

**“G.R. No. 211188 – *The Secretary of Finance and The Commissioner of Customs v. Semirara Mining Corporation***

**Antecedents**

In Special Civil Action No. 131171 entitled “*Semirara Mining Corporation v. the Secretary of Finance, the Commissioner of Internal Revenue, and the Commissioner of Customs,*” for declaratory relief, respondent Semirara Mining Corporation (SMC) prayed that its rights and tax obligations under Revenue Regulation 2-2012 be determined *vis-à-vis* its claimed exemption under Presidential Decree 972 (PD 972) from payment of Value-Added Tax (VAT) and excise taxes on its petroleum importation for its exclusive use in its coal mining operation.

After due proceedings, the Regional Trial Court (RTC) - Branch 146, Makati City ruled in favor of respondent per Decision dated February 10, 2014, thus:

x x x x

Having traversed all the issues raised by respondent, this Court will now determine the issue of whether or not Revenue Regulation 2-2012 will affect the exemption privilege granted to petitioner by virtue of PD 972 and the Coal Operating Contract executed by and between petitioner and the Department of Energy dated July 11, 1977 as amended on January 16, 1981.

For a better understanding of the issued Revenue Regulation 2-2012, it is relevant to look into the salient provisions of said regulation.

- over – five (5) pages ...

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SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS IMPORTED AND ITS SUBSEQUENT EXPORTATION OR SALES TO FREEPORT AND ECONOMIC ZONE LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID, AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS. –

The Value-Added and Excise taxes which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

The subsequent exportation or sale/delivery of these petroleum or petroleum products to registered enterprises enjoying tax privileges within the Freeport and Economic zones, as well as the sale of said goods to persons engaged in international shipping or international air transport operations, shall be subject to 0% VAT. With respect to the VAT paid on petroleum or petroleum products by the importer on account of aforesaid 0% VAT transactions/entities and the Excise taxes paid on account of sales to international carriers of Philippine or Foreign Registry for use or consumption outside the Philippines or exempt entities or agencies covered by tax treaties, conventions and international agreements for their use or consumption (covered by Certification in such entity's favor), as well as entities which are by law exempt from indirect taxes, the importer may file a claim for credit or refund with the BOC, which shall process the claim for refund, subject to the favorable endorsement of the BIR, in accordance with existing rules and procedures: Provided, that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT, and/or exempt from Excise taxes.'

A reading of the cited provision of the issued revenue regulations brings to mind that the objective of the said Revenue Regulation is to impose on all importers of petroleum products sweepingly without distinction that all taxes arising from the importation of petroleum be first paid and later on file a claim for refund or credit with the Bureau of Customs, but subject to the endorsement of the BIR. This is BIR's way of curbing the rampant smuggling of petroleum importation. **However, the said Revenue Regulation has altogether disregarded the rights of exempt entities by virtue of a law and or contract. The said regulation divested the grantees of the privilege of exemption arising from PD 972 and the subsequent Coal Operating Contract which was supposed to be an incentive to coal operators in the country.**

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x x x x

The application of revenue regulation to petitioner will stand to modify or repeal or impose a new condition to the long standing provision of PD 972 which only [the] Congress is empowered to do through legislation. It is clear that with their objective to curb rampant smuggling, **the Bureau of Internal Revenue, with the cooperation of the Secretary of Finance and the Bureau of Customs impairs the grant of incentive to petitioner as well as its contractual rights under the Coal Operating Contract. (emphasis supplied)**

x x x x

WHEREFORE, in view of the foregoing, the petition is GRANTED. It is hereby declared that in view of the tax exemption provided by Presidential Decree 972 and the Coal Operating Contract, Revenue Regulation No. 2-2012 issued by respondents is held to be inapplicable to petitioner Semirara Mining Corporation's direct importation of petroleum and petroleum products.

SO ORDERED.<sup>1</sup> (Emphasis supplied)

### **The Present Petition**

Petitioners, through the Office of the Solicitor General (OSG), now directly invoke the jurisdiction of the Court on a pure question of law, asserting that Revenue Regulation 2-2012 cogently supports the imposition of VAT and excise taxes on SMC's petroleum import brought into the country via the Port of Subic.

In response,<sup>2</sup> SMC reiterates that its tax exemption as a coal mine operator under PD 972 is not affected by Revenue Regulation 2-2012, specifically its tax exemption from payment of VAT and excise tax insofar as its petroleum shipment is concerned.

### **Ruling**

This case is moot. Revenue Regulation 2-2012 was declared unconstitutional by the Court *En Banc* in *Purisima v. Lazatin*,<sup>3</sup> thus:

**RR 2-2012 is unconstitutional.**

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<sup>1</sup> Penned by Judge Encarnacion Jaja G. Moya, *rollo*, pp. 20-21, 23.

<sup>2</sup> *Id.* at 262-273.

<sup>3</sup> 801 Phil. 395, 425-427 (2016).

According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress. In passing RR 2-2012, petitioners illegally amended the law – a power solely vested on the Legislature.

We agree with the respondent.

**The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.**

**It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.***

**While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.**

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.

Finally, the State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the respondents have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.

**In these lights, we hereby rule and declare that RR 2-2012 is null and void.** (Emphasis supplied, citations omitted).

In view of *Lazatin*, therefore, the present petition which seeks to impose VAT and excise tax on SMC's petroleum shipment under Revenue Regulation 2-2012 should now be dismissed.

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**WHEREFORE**, the petition is **DISMISSED** on ground of mootness.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *prata*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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The Solicitor General  
134 Amorsolo Street, Legaspi Village  
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The Hon. Presiding Judge  
Regional Trial Court, Branch 146  
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(SCA No. 13-1171)

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