G.R. No. 202789 – **COMMISSIONER OF INTERNAL REVENUE,** *petitioner, versus* **PUREGOLD DUTY FREE, INC.,** *respondent.*

Promulgated:

June 22, 2015

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DISSENTING OPINION

VILLARAMA, JR., *J.*:

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

With all due respect, I DISSENT.

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

The Antecedents

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

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

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1 *Rollo*, pp. 61-67. Penned by Associate Justice Amelia R. Cotangco-Manalastas.
2 Id. at 68-70.
3 CTA En Banc records, pp. 22-33.
4 CTA Division records, pp. 218-233.

Respondent through counsel protested the assessment, citing the tax exemptions granted to CSEZ pursuant to Executive Order No. (EO) 80. It noted that CSEZ enjoys similar tax incentives granted by Republic Act No. (R.A.) 7227 to Subic Special Economic and Freeport Zone (SSEFZ), and by analogy is thus also covered by the exception mentioned in Section 131 (A) of R.A. 8424 (National Internal Revenue Code of 1997). In a Supplementary Protest Letter and the Addendum thereto, respondent further invoked the provisions of R.A. No. 7916, Proclamation No. 1035 issued by then President Gloria Macapagal-Arroyo, and BIR Ruling No. 046-95 issued by then Commissioner Liwayway Vinzons-Chato.[5]

On October 26, 2007, respondent received the formal letter of demand for the payment of deficiency VAT and excise taxes assessed against its importation of alcohol and tobacco products for the taxable periods January 1998 to May 2004, in the total amount of ₱2,780,610,174.51 inclusive of fees, charges and interest. In reply, respondent's counsel wrote Elvira R. Vera, Head Revenue Executive Assistant, LTS-Excise Large Taxpayers Division, requesting the cancellation of the assessment on the ground that respondent has already availed of tax amnesty under R.A. No. 9399 which relieved it of any civil, criminal or administrative liabilities for the applicable taxes and duties, inclusive of penalties, interests and other additions thereto.[6]

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

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

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5 BIR records, pp. 87-88, 91-105, 123-129 & 131-133.
6 CTA Division records, pp. 21, 26-27.
7 Id. at 89-90.
8 503 Phil. 42 (2003).

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

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

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

Ruling of the CTA Second Division

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

The CTA Second Division found that respondent complied with the requirements for availing of the benefits under R.A. 9399 by filing a notice and return in such form as prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs, and thereafter, paying the amnesty tax of ₱25,000.00 within six (6) months from the effectivity of R.A. 9399.

On the question of whether respondent's tax liabilities are excluded under R.A. 9399, the CTA Second Division noted that what respondent sought to cancel was the assessment of deficiency VAT and excise taxes on imported alcohol and tobacco products, which clearly are not taxes on articles, raw materials, capital, goods and consumer items *removed* from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. Hence, it was

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9 CTA Division records, pp. 167-182, 211-323, 329-330, 332-341, 394, 427-428.
10 Id. at 442-444, 492-494.
11 Supra note 3, at 22-29.

concluded that the subject impositions are not excluded from the coverage of amnesty as provided in Section 1 of R.A. 9399.

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

The CTA Second Division thus ruled:

> In the light of this Court's findings that petitioner has substantially complied with the tax amnesty program, petitioner is thereby relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty. However, the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local impositions under relevant tax laws, rules and regulations; and (ii) five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered.
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> Accordingly, the amount covered by the tax amnesty shall be the difference between the amount of P2,780,610,174.51, which comprises petitioner's deficiency excise tax and VAT; and the amount of P38,700,200.55 which is the equivalent of 5% tax on gross income earned by said registered business enterprises for the calendar year 1998 to 2004; or a total of P2,741,909,973.96. Details are as follows:

Deficiency Excise Tax, VAT and Inspection Fees per Assessment				
		Excise Tax	P 923,418,902.25	
		VAT	1,857,037,916.57	
		Inspection Fees	153,355.70	P2,780,610,174.51
Less:	5% Income Tax Paid Per Returns Filed			
	Exh	Year	5% Tax	
	G	1998	P 2,504,241.00	
	I	1999	11,357,233.00	
	K	2000	8,748,137.00	
	M	2001	3,419,044.00	
	O	2002	3,938,554.00	
	P	2003	4,295,522.00	
	Q	2004	4,437,469.55	38,700,200.55
Taxes covered by the tax amnesty				**P2,741,909,973.96**

> **WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is hereby **GRANTED**. The Resolution of this Court promulgated on June 3, 2010 is hereby set aside. Respondent's assessment against petitioner for deficiency VAT and excise tax for the importation of alcohol and tobacco products covering the period January 1998 to May 2004 is hereby **CANCELLED** and **SET ASIDE** solely in view of

> petitioner's availment of Tax Amnesty under Republic Act No. 9399. Accordingly, the instant Petition for Review is hereby deemed **WITHDRAWN** and the case is considered **CLOSED** and **TERMINATED**.
>
> **SO ORDERED**.[12]

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

Ruling of the CTA En Banc

By Decision dated May 9, 2012, the CTA *En Banc* dismissed petitioner's appeal. The CTA adopted *in toto* the findings and conclusions of the CTA Second Division on the issues raised anew by petitioner concerning the applicability of Section 131(A) of the 1997 NIRC to respondent's availment of the tax amnesty under R.A. 9939, and the exclusion of respondent's deficiency VAT and excise taxes on its importation of tobacco and alcohol products from the coverage of said amnesty.

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

Issues/Arguments

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

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> THE HONORABLE CTA *EN BANC* GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE AMNESTY TAX OF P25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND SUBSTANTIAL FACT THAT RESPONDENT'S PLACE OF BUSINESS IS IN METRO MANILA AND NOT CLARK FIELD, PAMPANGA, AS STATED IN ITS ARTICLES OF INCORPORATION; THUS, RESPONDENT IS NOT ENTITLED TO THE BENEFITS UNDER R.A. NO. 9399.
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> II
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> ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A DULY CSEZ REGISTERED ENTERPRISE WITH PRINCIPAL PLACE OF BUSINESS IN CLARK FIELD, PAMPANGA, STILL THE HONORABLE CTA *EN BANC* GRAVELY AND SERIOUSLY ERRED, AS ITS RULING IS CONTRARY TO THE INTENT OF R.A. 9399 WHICH EXCLUDES DEFICIENCY TAX; THUS, RESPONDENT REMAINS TO BE LIABLE FOR EXCISE TAXES ON ITS WINE,

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[12] Id. at 28-29.

LIQUOR AND TOBACCO IMPORTATIONS.[13]

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

Our Ruling

The petition is meritorious.

R.A. 7227, otherwise known as the "Bases Conversion and Development Act of 1992", provided for the conversion of the Clark and Subic military reservations and their extension such as the Camp John Hay in Baguio City, into alternative productive uses in order to promote economic and social development of the country, particularly Central Luzon. It likewise created the Bases Conversion and Development Authority (BCDA) which shall administer and implement a comprehensive development plan for the former military reservations and their extensions.

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

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

On April 3, 1993, President Fidel V. Ramos issued Proclamation No. l63 creating the CSEZ with the BCDA as its governing body. EO 80 established the Clark Development Corporation (CDC) as the operating and implementing arm of the BCDA to manage the CSEZ. EO 80 also provided for tax incentives for CSEZ, *viz*:

> SECTION 5. *Investment Climate in the CSEZ.* — Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.
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> Among others, **the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227** and those applicable incentives granted in the Export Processing

[13] *Rollo*, pp. 30-31.

> Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted.
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> x x x x (Emphasis supplied)

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

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

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

> In *John Hay Peoples Alternative Coalition, et al. v. Victor Lim, et al.,* this Court resolved an issue, very much like the one herein, concerning the legality of the tax exemption benefits given to the John Hay Economic Zone under Presidential Proclamation No. 420, Series of 1994, "CREATING AND DESIGNATING A PORTION OF THE AREA COVERED BY THE FORMER CAMP JOHN AS THE JOHN HAY SPECIAL ECONOMIC ZONE PURSUANT TO REPUBLIC ACT NO. 7227."
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> In that case, among the arguments raised was that the granting of tax exemptions to John Hay was an invalid and illegal exercise by the President of the powers granted only to the Legislature. Petitioners therein argued that Republic Act No. 7227 expressly granted tax exemption only to Subic and not to the other economic zones yet to be established. Thus, the grant of tax exemption to John Hay by Presidential Proclamation contravenes the constitutional mandate that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the members of Congress."
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> This Court sustained the argument and ruled that the incentives under Republic Act No. 7227 are exclusive only to the SSEZ. The President, therefore, had no authority to extend their application to John Hay. To quote from the Decision:
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> > More importantly, the nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of a state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions, or local

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14 460 Phil. 530 (2003).

15 Supra note 8.

> governments may pass ordinances on exemption only from local taxes.
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> The challenged grant of tax exemption would circumvent the Constitution's imposition that a law granting any tax exemption must have the concurrence of a majority of all the members of Congress. In the same vein, the other kinds of privileges extended to the John Hay SEZ are by tradition and usage for Congress to legislate upon.
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> Contrary to public respondents' suggestions, the claimed statutory exemption of the John Hay SEZ from taxation should be manifest and unmistakable from the language of the law on which it is based; it must be expressly granted in a statute stated in a language too clear to be mistaken. Tax exemption cannot be implied as it must be categorically and unmistakably expressed.
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> If it were the intent of the legislature to grant to John Hay SEZ the same tax exemption and incentives given to the Subic SEZ, it would have so expressly provided in R.A. No. 7227.

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

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

> SECTION 1. *Grant of Tax Amnesty*. - **Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993**; Poro Point Special Economic and Freeport Zone created under Proclamation No. 216, series of 1993; John Hay Special Economic Zone created under Proclamation No. 420, series of 1994; and Morong Special Economic Zone created under Proclamation No. 984, series of 1997**,** may avail themselves of the benefits of remedial tax amnesty herein granted on **all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might**

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16 Id. at 60-61.

17 AN ACT DECLARING A ONE-TIME AMNESTY ON CERTAIN TAX AND DUTY LIABILITIES, INCLUSIVE OF FEES, FINES, PENALTIES, INTERESTS AND OTHER ADDITIONS THERETO, INCURRED BY CERTAIN BUSINESS ENTERPRISES OPERATING WITHIN THE SPECIAL ECONOMIC ZONES AND FREEPORTS CREATED UNDER PROCLAMATION NO. 163, SERIES OF 1993; PROCLAMATION NO. 216, SERIES OF 1993; PROCLAMATION NO. 420, SERIES OF 1994; AND PROCLAMATION NO. 984, SERIES OF 1997, PURSUANT TO SECTION 15 OF REPUBLIC ACT NO. 7227, AS AMENDED, AND FOR OTHER PURPOSES.

> **have accrued to them due to the rulings of the Supreme Court in the cases of *John Hay People's Coalition v. Lim, et. al., G. R. No. 119775 dated 24 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G. R. No. 132527 dated 29 July 2005*,** by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five thousand pesos (P25,000.00) within six months from the effectivity of this Act: *Provided*, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: *Provided, however*, That the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.
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> SEC. 2. *Immunities and Privileges*. — Those who have availed themselves of the tax amnesty and have fully complied with all its conditions shall be relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty granted under Section 1 herein.

Respondent's Actual Business Operations is in Clark Field, Pampanga

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

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

Ordinarily, a party cannot raise for the first time on appeal an issue not raised in the trial court.[18] The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is

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

discretionary upon the courts.[19] In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[20] we took exception to an issue raised for the first time in the Supreme Court, thus:

> x x x As clearly ruled by Us "To allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level," would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. Thus it is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot generally be raised for the first time on appeal. x x x
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> **Nonetheless it is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation**. **The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.**[21] (Emphasis supplied; citation omitted)

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

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

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

R.A. 9399 requires that the taxpayer seeking amnesty be a registered business enterprise of and *operating within* the special economic zones, in this case, the CSEZ created pursuant to Proclamation No. 163. Respondent adduced substantial evidence before the CTA that it is a duly registered CSEZ business enterprise and actually conducts its business therein by

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

20 243 Phil. 703 (1988).

21 Id. at 709.

22 CTA Division records, pp. 218-229.

23 *Rollo*, pp. 551-555.

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

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

operating a duty-free shop. Among the documentary evidence submitted are the Certificate of Registration as a locator and Certificates of Tax Exemption both issued by CDC and CSEZ, as well as BIR Certificate of Registration, several BIR Permits to operate cash registers, and a BIR Certification that respondent has no registered branch under Puregold Duty Free, Inc. Respondent's Accounting Manager, Marissa I. delos Reyes, also submitted her Judicial Affidavit and testified in court in support of the allegations in the petition for review filed in the CTA.[26]

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

> ARTICLE 4. *Coverage*. – Business enterprises **operating, authorized, duly registered and granted with tax and duty incentives** prior to the effectivity of RA 9399, within the following Special Economic Zones and Freeport Zones may avail themselves of the one-time remedial amnesty, to wit:
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> 1. Clark Special Economic Zone (CSEZ) created under Proclamation No. 163, Series of 1993;
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> x x x x (Emphasis supplied)

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

Respondent Liable to Pay Assessed Deficiency Taxes

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

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

> SEC. 131. *Payment of Excise Taxes on Imported Articles*. –

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

(A) *Persons Liable*. – x x x

x x x x

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

x x x x

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

Respondent likewise cannot seek refuge from R.A. 9400,[29] which, while amending Section 15 of R.A. 7227, still is not the charter or legislation establishing the CSEZ and CFZ. While amending Section 15 of R.A. 7227, said law reproduced the provision authorizing the President to create by executive proclamation the CSEZ and inserted sub-sections on Poro Point Freeport Zone, Morong SEZ and John Hay SEZ, all similarly

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27 Supra note 14.

28 Supra note 8.

29 AN ACT AMENDING REPUBLIC ACT NO. 7227, AS AMENDED, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.

created by previous Presidential Proclamations. Moreover, R.A. 9400 was approved on March 20, 2007, long after the subject importations and assessment of deficiency taxes.

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

> SEC. 131. *Payment of Excise Taxes on Imported Articles* –
>
> (A) *Persons Liable.* – x x x
>
> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. **This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports** of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled 'duty-free' and 'not for resale': *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles other than cigars and cigarettes, distilled spirits, fermented liquors and wines, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.

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

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

> **ARTICLE 7**. *Exclusions*. – The one-time remedial amnesty under RA 9399 shall not include applicable taxes and duties on articles, raw

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

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

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

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

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

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

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31 453 Phil. 1043, 1052 (2003).
32 361 Phil. 916 (1999).

interpretation could not place the Government in estoppel to correct or overrule the same.[33]

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

I therefore **VOTE** that - -

1. The present petition be **GRANTED**;

2. The Decision dated May 9, 2012 and Resolution dated July 18, 2012 of the Court of Tax Appeals En Banc in CTA EB No. 723 (CTA Case No. 7812) be **REVERSED** and **SET ASIDE**;

3. Respondent Puregold Duty Free, Inc. be **ORDERED to PAY** ₱2,780,610,174.51 deficiency VAT and excise taxes inclusive of surcharge and interest, plus 20% deficiency interest computed from June 23, 2008 until full payment thereof pursuant to Section 249 (C) of the 1997 National Internal Revenue Code, as amended; and

4. Should any motion for reconsideration be filed, the same be referred to the *Banc* as the subject matter herein may have a huge financial impact on businesses thus affecting the country's welfare.[37]

MARTIN S. VILLARAMA, JR.
Associate Justice

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33 Id. at 931.

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

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

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

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