REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

THE TELEEMPIRE INCORPORATED, as represented by its President, Ma. Victoria Arlette A. Feliciano,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR OF REVENUE REGION NO. 4, CITY OF SAN FERNANDO, PAMPANGA,
Respondents.

CTA Case No. 9968

Members:

DEL ROSARIO, *PJ, Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 16 2023; 10:00AM

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RESOLUTION

REYES-FAJARDO, ***J.*:**

In the Decision dated April 25, 2023,[1] we found that on April 26, 2016, Subic Bay Metropolitan Authority (SBMA) issued a Certificate of Registration and Tax Exemption (CRTE) in favor of petitioner. Under Section 12(c) of Republic Act (RA) No. 7227, as amended by RA No. 9400, in relation to the Lease Agreement dated February 26, 2016, executed between petitioner and the SBMA, along with the Implementing Rules and Regulations (IRR) of said law, and pertinent revenue issuances by the Bureau of Internal Revenue (BIR) and Department of Finance (DOF), petitioner may only be exempted from Documentary Stamp Tax Imposition as of the CRTE's issuance on April 26, 2016. As such, the lease contract, evidenced by the Lease Agreement dated February 26, 2016 is *not* exempted from DST. For this reason, we *rejected* petitioner's plea to: (1) annul the DST

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[1] Docket (Vol. II), pp. 929-948.

assessment for taxable year (TY) 2016, embodied in the Bureau of Internal Revenue (BIR)'s Formal Letter of Demand and Audit Results/Assessment Notice dated February 27, 2018; and (2) refund or issue a tax credit certificate on the alleged erroneously and illegally collected DST it paid for TY 2016, amounting to ₱3,431,788.92.

We, too, refused to lend credence on the interpretation provided by SBMA's Manager of the Business and Investment Department for Leisure and the Officer-in-Charge of the Deputy Administrator for the Business Group Josephine Ivy F. Alipoon that petitioner is exempted from DST as of the execution of the Lease Agreement dated February 26, 2016, because only the SBMA Board of Directors may interpret its rules and regulations.

However, we canceled the imposition of the compromise penalty against petitioner, because it was without the conformity of the latter. Ultimately, we decreed:

> **WHEREFORE,** the Petition for Review, filed by The Teleempire Incorporated on November 5, 2018, as represented by its President, Ma. Victoria Arlette A. Feliciano, is **PARTIALLY GRANTED**. Accordingly, we **RESOLVE** to:
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> a. **ORDER** petitioner **TO PAY** respondents, the total amount of **₱2,484,153.54**, representing the basic DST due, including the corresponding surcharge, deficiency interest and delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, by RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by RR No. 21-2018, computed as follows:

Taxable Basis Per Audit	₱3,651,125.00
Less: Partial Payment on September 14, 2017	2,140,561.00
Basic Deficiency DST Due	₱1,510,564.00
25% Surcharge	377,641.00
20% Deficiency Interest (March 5, 2016 to December 31, 2017) *[₱1,510,564.00 x 20% x 666/365 days]*	551,252.40
12% Deficiency Interest (January 1, 2018 to March 31, 2018) *[₱1,510,564.00 x 12% x 90/365 days]*	44,696.14
Total Amount Due as of March 31, 2018	**₱2,484,153.54**

> b. **ORDER** petitioner **TO PAY** respondents, the delinquency interest at the rate of twelve percent (12%) on the ₱2,484,153.54, corresponding to the total amount due as of March 31, 2018, as determined above, or an amount of ₱816.71 per day, from April 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;
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> c. **DELETE** the compromise penalty imposed upon petitioner amounting to ₱10,000.00 relative to the DST assessment for TY 2016; and,
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> d. **DENY** petitioner's claim for refund or issue a tax credit certificate on the alleged erroneously and illegally collected DST and penalties it paid for TY 2016, amounting to ₱3,431,788.92.
>
> **SO ORDERED.**[2]

Both unfazed, respondents and petitioner moved to partly reconsider the assailed Decision.

Respondents' Motion for Partial Reconsideration (of the Decision April 25, 2023)[3]

Respondent argues that petitioner must be adjudged liable to pay a compromise penalty of ₱10,000.00 for its failure to pay the deficiency DST, within the period prescribed by law.

By way of Comment/Opposition (to Respondents' Motion for Partial Reconsideration),[4] petitioner mirrors the Court's conclusion that compromise penalty may not be imposed as it did not consent to its imposition.

Petitioner's Motion for Partial Reconsideration[5]

Petitioner maintains that it is entitled to: (1) cancellation of the deficiency DST assessment for TY 2010; and (2) refund of the DST it

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2 Footnotes omitted.
3 Docket (Vol. II), pp. 949-953.
4 *Id.*, unpaginated.
5 *Id.* at pp. 1006-1049

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partially paid pertaining to the Lease Agreement dated February 26, 2016, amounting to ₱3,431,788.92. In support thereof, petitioner condensed the following argumentations:

A.

Section 12(c) of RA 7227 does not require the issuance of a CRTE as a condition precedent to enjoy the tax exemption granted therein. Administrative Agencies such as the BIR may not impose additional requirements not provided by law.

B.

Requiring a CRTE to enjoy the tax exemption under RA 7227, when no such requirement is contemplated in the law, infringes the exclusive power of congress to grant tax exemptions, and is therefore unconstitutional.

C.

The CRTE requirement results in the absurd consequences that are inconsistent with the clear objective of RA 7227 to grant tax exemptions in order to attract investors to locate within the SSEZ. It penalizes investors with taxes for locating within the SSEZ, the very activity RA 7227 seeks to encourage.

D.

Registration with the SBMA, and qualification for the tax exemption under RA 7227, is effective from the execution of the Lease Agreement. The subsequent issuance of the CRTE merely confirms or attests the fact of registration.

E.

SBF Enterprises such as petitioner should not be penalized for the inefficiencies of, and imprecise language used by, the SBMA in the face of the clear and overriding intent of RA 7227 to grant tax exemptions for investors locating in the SSEZ.

Any resulting confusion should be resolved in favor of the tax exemption as explicitly demanded by Section 12(c) of RA 7227

F.

Ms. Alipoon, a public officer, enjoys the presumption of regularity in the discharge of her official duties, her unrebutted testimony, which is also supported by law and evidence, should be accorded full faith and credence by this Honorable Court.

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Through Comment/Opposition (Re: Petitioner's Motion for Partial Reconsideration dated May 22, 2023),[6] respondent mainly counters that: (1) the deficiency DST assessment for TY 2010 is valid, because at the time of execution of the Lease Agreement on February 26, 2016, petitioner is not exempt from the payment thereof; (2) assuming, *sans* conceding, that petitioner is exempt from payment of such DST, the latter failed to exhibit that SBMA shouldered such tax; and (3) considering that petitioner is *not* exempt from such DST, the amounts corresponding to partial payment thereon, was rightfully and legally collected from the latter; hence, refund thereof must be rejected.

RULING

The Motions lack merit.

Respondents' Motion for Partial Reconsideration (of the Decision April 25, 2023)

The sole contention put forward by respondents in their Motion for Partial Reconsideration, was answered, and found without merit in the assailed Decision of April 25, 2023.

Petitioner's Motion for Partial Reconsideration

For reference, the pertinent portion of Section 12(c) of RA No. 7227, as amended by RA No. 9400,[7] states:

> SEC. 12. *Subic Special Economic Zone*. – ....
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> ...
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> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid**

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6 *Id.* at pp. 1054-1068.

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

> **by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone ....[8]

The national and local tax exemption referred to in the above-cited provision only applies to **business enterprises within the SSEZ**. Tellingly, RA No. 7227, as amended by RA No. 9400 is silent as to what constitutes a business enterprise within the SSEZ. In line with the SBMA's authority to promulgate [9] rules and regulations pertaining to RA No. 7227, Section 3(g) and (h) of the IRR [10] respectively defines the term SBF Enterprise and Certificate of Registration in the following manner:

> SECTION 3. *Definitions.* — For purposes of these Rules, these terms shall be understood to have the following meanings:
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> ...
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> g. *SBF Enterprise* — refers to **any business entity or concern within the SBF duly registered** with and/or licensed by the SBMA to operate any lawful economic activity within the SBF.
>
> h. *Certificate of Registration* — refers to the **certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**[11]

Lagman v. Executive Secretary (Lagman)[12] held that subordinate legislation entails delegating to administrative bodies the power to "fill in" the details of a statute. Enacting subordinate legislation has become necessary amid the "proliferation of specialized activities and their attendant peculiar problems," which the legislature may not be able to competently address. Pursuant to *Lagman*, the SBMA, through its IRR, filled-in the specific document crucial to be considered as a business enterprise *within* the SSEZ entitled to avail of the tax exemption under Section 12(c) of RA No. 7227, as amended by RA

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8 Boldfacing supplied.
9 Section 5(m) of RA No. 7227.
10 RULES AND REGULATIONS IMPLEMENTING THE PROVISIONS RELATIVE TO THE SUBIC SPECIAL ECONOMIC AND FREEPORT ZONE AND THE SUBIC BAY METROPOLITAN AUTHORITY UNDER REPUBLIC ACT NO. 7227, OTHERWISE KNOWN AS THE "BASES CONVERSION AND DEVELOPMENT ACT OF 1992."
11 Boldfacing supplied.
12 G.R. No. 197422, November 3, 2020.

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No. 9400, which Congress opted *not* to express in the statute—the SBMA COR.

IP E-Game Ventures, Inc. v. Tan (IPEVI),[13] too, discoursed, that a contract is the law between the parties. Obligations arising from contracts have the force of law between them and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order, or public policy, the same are binding as between the parties. Following *IPEVI,* the Lease Agreement dated February 26, 2016, executed by petitioner and SBMA explicitly requires the SBMA COR or CRTE to reap the benefits of tax exemption under Section 12(c) of RA No. 7227, as amended by RA No. 9400. As said agreement is *complementary,* rather than *contrary or inconsistent* to said statute and its IRR, the Lease Agreement dated February 26, 2016 is the law between SBMA and petitioner, with Section 5 thereof stating as follows:

> **Section 5. Certificate of Registration; Certificate of Registration and Tax Exemption; -** [Petitioner] hereby understood that, notwithstanding the execution or perfection of this Agreement, **it can only conduct business on the Leased Property upon issuance in its favor of a Certificate of Registration (CR) or Certificate of Registration and Tax Exemption (CRTE) allowing it to do business in the SBF pursuant to the pertinent provisions of the Act and the Subic Bay Metropolitan Authority's ("SBMA") Implementing Rules and Regulations.**[14]

Summing it up, the tax exemption in Section 12(c) of RA No. 7227, as amended by RA No. 9400 presupposes that the beneficiary thereof is a business enterprise within the SSEZ. In turn, the SBMA's COR or CRTE is the proof of said business enterprise. It, thus, follows that the same COR or CRTE, required as proof of tax exemption in Revenue Regulations (RR) No. 1-95, along with DOF Department Order (DOF-DO) No. 3-08, is *not* an additional condition to enjoy tax exemption under Section 12(c) of RA No. 7227, as amended RA No. 9400. *Ergo,* contrary to petitioner's position, such RR and DOF-DO are in synch, and not incompatible with, nor anathema to said statute, and its IRR.

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13 G.R. No. 239576, June 30, 2021.

14 Boldfacing supplied.

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Since the SBMA only issued the CRTE in favor of petitioner on April 26, 2016, the latter may only be legally considered as a business enterprise within the SSEZ exempt from taxes as of said date. *A fortiori*, petitioner is liable for DST emanating from the Lease Agreement dated February 26, 2016. In view thereof, the reliefs desired by petitioner, *i.e.*, cancellation of the DST assessment for TY 2016, and refund of partial payment on said DST, must fail.

We also reject petitioner's challenge on the constitutionality of the CRTE requirement as precondition for tax exemption under Section 12(c) of RA No. 7227, as amended by RA No. 9400. *Lawyers against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*,[15] spelled out the preconditions for a court to exercise its power of judicial review:

> Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

Of the four (4) rudiments just mentioned, only the *third* and *fourth* are to be considered here.

For the *third* rudiment, the earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if it was not raised in the pleadings before a competent court, it cannot be considered at the trial, and, if not considered in the trial, it cannot be considered on appeal.[16] The matter of constitutionality of the CRTE requirement as a prerequisite for tax exemption under Section 12(c) of RA No. 7227, as amended by RA No. 9400, was *not* raised at the earliest opportunity in the Petition for Review;[17] hence, we cannot rule on said issue now.

For the *fourth* rudiment, *lis mota* means that the court will not pass upon a question of unconstitutionality, although properly

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15 G.R. No. 164987, April 24, 2012.

16 See *Matibag v. Benipayo, Jr.*, G.R. No. 149036, April 2, 2002.

17 Docket (Vol. I), pp. 10-23.

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presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law*. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[18] If there is some other ground upon which the court may rest its judgment, that course will be adopted and the question of constitutionality should be avoided.[19]

Adverting to our earlier discussion, petitioner may only be considered as tax-exempt only upon the actual issuance of the CRTE on April 26, 2016, pursuant to Section 12(c) of RA No. 7227, as amended by RA No. 9400, its IRR, along with RR No. 1-95, and DOF-DO No. 3-08. Given that the merits of the present controversy may be fully addressed without the need of touching the constitutional issue raised by petitioner, the same is *not* the very *lis mota* of this case.

We are likewise mindful of petitioner's invocation of *Executive Secretary, et al. v. Southwing Heavy Industries, Inc., et al.*[20] that "[t]he Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. ..."

Yet, one who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[21] Petitioner failed to establish that it is a business enterprise within the SSEZ at the time the Lease Agreement was executed on February 26, 2016, because the CRTE was only issued on April 26, 2016; hence, the latter is *not* excused from DST imposition stemming therefrom.

Penultimately, we disagree with petitioner's claim that the tax exemption under RA No. 7227, as amended by RA No. 9400, is

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18 *Congressman Enrique T. Garcia of the 2nd District of Bataan v. The Executive Secretary*, G.R. No. 157584, April 2, 2009. Italics in the original.

19 *Kalipunan ng Damayang Mahihirap, Inc.*, et al. *v. Robredo*, G.R. No. 200903, July 22, 2014; *General v. Uro*, G.R. No. 191560, March 29, 2011; and *Liban v. Gordon*, G.R. No. 175353, January 18, 2011.

20 G.R. No. 161171, February 20, 2006.

21 See *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE) v. Commissioner, Bureau of Internal Revenue, et al.*, G.R. No. 213446, July 3, 2018.

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effective from the execution of the Lease Agreement on February 26, 2016.

Under Section 12(c) of RA No. 7227, as amended by RA No. 9400, only business enterprises within the SSEZ are legally entitled to tax exemption. Section 3(g) of the IRR states that a SBF Enterprise is any business entity or concern within the SBF duly registered with the SBMA to do lawful activity in the SBF. In turn, Section 3(h) of the IRR attests that the COR/CRTE issued by the SBMA is the document representing registration as a SBF Enterprise. Therefore, the tax exemption may only be enjoyed by petitioner only upon the issuance of the CRTE on April 26, 2016, because only then would it be legally considered as a business enterprise within the SSEZ.

Finally, the remainder of petitioner's arguments were already answered, and found wanting, in the assailed Decision.

WHEREFORE, respondents' Motion for Partial Reconsideration (of the Decision April 25, 2023), filed on May 17, 2023, and petitioner's Motion for Partial Reconsideration, posted on May 22, 2023, are **DENIED**, for lack of merit. The Decision dated April 25, 2023, is **AFFIRMED**.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

(On Official Business)
ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice