

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

SUBIC BAY FREEPORT TRANSHIPPER'S ASSOCIATION,
Petitioner,

C.T.A. CASE NO. 7302

Members:

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

- versus -

Promulgated:

**COMMISSIONER OF INTERNAL REVENUE,
COMMISSIONER OF CUSTOMS, AND
DISTRICT COLLECTOR OF CUSTOMS
PORT OF SUBIC,**

Respondents.

OCT 14 2005

[Signature]

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RESOLUTION

This resolves the Petition for Injunction with a prayer for the issuance of a temporary restraining order ("TRO") and/or preliminary injunction filed on August 1, 2005.

Petitioner prays for relief through the Court's issuance of a TRO and thereafter a permanent injunction against respondents from collecting excise tax on transshipment of goods.

Petitioner's posture is devoid of merit.

By virtue of Section 9 of R.A. No. 9282, the Court of Tax Appeals is empowered to issue injunctive writs if collection of taxes jeopardizes the interest of the government and/or taxpayers. Succinctly stated, the issuance of a temporary restraining order and/or preliminary injunction is predicated on irreparable injury against the aggrieved party.¹ The purpose of a temporary restraining order or preliminary injunction, whether preventive or mandatory, is merely to prevent a threatened wrong and protect the property or rights

¹ Section 5, Rule 58 of the Rules of Court

involved from further injury, until the issues can be determined after the hearing on the merits.²

The Supreme Court defined the meaning of irreparable injury in *Ollendorff vs. Abrahamson* as follows:³

"By 'irreparable injury' is not meant such injury as is beyond the possibility of repair, or beyond possible compensation in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not be submitted to on the one hand or inflicted on the other; and, because it is so large on the one hand, or so small on the other, is of such constant and frequent recurrence that no fair or reasonable redress can be had therefore in a court of law."

Petitioner is not without any redress in the instant case. The forwarders affected by the imposition of excise taxes may file a timely protest questioning the alleged deficiency tax assessments or they may claim for refund to recover what they have erroneously paid before the appropriate government agency.

Granting *arguendo* that the suspension of the enforcement of excise taxes over cargoes in transit is justified, this will not in any manner impede tax collection. The mere fact that a statute is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined.⁴

More importantly, the Court cannot give due course to the present petition as it is anchored on Rule 58 of the Revised Rules of Court which provides for the provisional remedy, a preliminary injunction and/or temporary restraining order, even if the case is for "Petition for Injunction". The Supreme Court explained:

"Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.

"The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary

² Lim vs. Pacquing (240 SCRA 649) citing *Ohio Oil Co. v. Conway*, 279 U.S. 813, 73 L. Ed. 972, 49 S. Ct. 256; *Gobbi v. Dilao*, 58 Or. 14, 111 p. 49, 113, p. 57

³ 38 Phil. 585

⁴ *Valley Trading Co., Inc. vs. CFI of Isabela, Br. II*, 171 SCRA 508

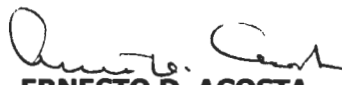
injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

"A restraining order, on the other hand, is issued to preserve the *status quo* **until the hearing of the application for preliminary injunction** which cannot be issued *ex parte*. Under Rule 58 of the Rules of Court, a judge may issue a temporary restraining order with a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed **automatically vacated**. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would **automatically expire** on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary."⁵

Settled is the rule that it is not the caption of the pleading but the allegations therein that determine the nature of the action and the court shall grant the relief warranted by the allegations and the proof even if no such relief is prayed for.⁶ There being no main action for injunction pending the Court, the ancillary action for injunction must fail.

Premises considered, petitioner's prayer of a Temporary Restraining Order and/or Permanent Injunction is **DENIED DUE COURSE** for lack of merit and the case is hereby **DISMISSED**.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice

⁵ *Bacolod City Water District vs. Labayan*, G.R. No. 157494. December 10, 2004

⁶ *Ras vs. Sua*, 25 SCRA 153