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A meticulous study of the whole record of this case including the transcripts of stenographic notes inevitably leads to the conclusion that the guilt of the accused has been proven to be beyond reasonable doubt.

WHEREFORE, the decision appealed from is *AFFIRMED* with modification of an award of civil indemnity which is hereby increased in the amount of ₱50,000.00 in line with existing precedents.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, Regalado, and *Nocon, JJ.,* concur.

EN BANC

[G.R. No. 101273. July 3, 1992]

CONGRESSMAN ENRIQUE T. GARCIA (Second District of Bataan), *petitioner, vs.* **THE EXECUTIVE SECRETARY, THE COMMISSIONER OF CUSTOMS, THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, THE TARIFF COMMISSION, THE SECRETARY OF FINANCE, and THE ENERGY REGULATORY BOARD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; PRESIDENT; AUTHORIZED BY CONGRESS TO FIX TARIFF RATES AND OTHER DUTIES OR IMPOSTS.— Under Section 24, Article VI of the Constitution, the enactment of appropriation, revenue and tariff bills, like all other bills is, of course, within the province of the Legislative rather than the Executive Department. It does not follow, however, that therefore Executive

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Orders Nos. 475 and 478, assuming they may be characterized as revenue measures, are prohibited to the President, that they must be enacted instead by the Congress of the Philippines. There is explicit constitutional permission (Section 28[2] of Article VI of the Constitution) to Congress to authorize the President "subject to such limitations and restrictions as [Congress] may impose" to fix "within specific limits" "tariff rates xxx and other duties or imposts xxx." The relevant congressional statute is the Tariff and Customs Code of the Philippines, and Sections 104 and 401, the pertinent provisions thereof. These are the provisions which the President explicitly invoked in promulgating Executive Orders Nos. 475 and 478.

2. TAXATION; TARIFF AND CUSTOMS CODE; CUSTOMS DUTIES; NAME GIVEN TO TAXES ON THE IMPORTATION AND EXPORTATION OF COMMODITIES. — Customs duties which are assessed at the prescribed tariff rates are very much like taxes which are frequently imposed for both revenue-raising and for regulatory purposes. Thus, it has been held that "*customs duties*" is "the name given to *taxes on the importation* and exportation *of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country."

3. ID.; ID.; ID.; PROTECTION AFFORDED TO LOCAL INDUSTRIES. — The levying of customs duties on imported goods may have in some measure the effect of protecting local industries — where such local industries actually exist and are producing comparable goods. Simultaneously, however, the very same customs duties inevitably have the effect of producing governmental revenues. Customs duties like internal revenue taxes are rarely, if ever, designed to achieve one policy objective only. Most commonly, customs duties, which constitute taxes in the sense of exactions the proceeds of which become public funds — have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes and frequently, it is very difficult to say which, in a particular instance, is the dominant or principal objective. In the instant case, since the Philippines in fact produces ten (10) to fifteen percent (15%) of the crude oil consumed here, the imposition of increased tariff rates and a special duty on imported crude oil and imported oil products may be seen to

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have *some* "protective" impact upon indigenous oil production. For the effective price of imported crude oil and oil products is increased. At the same time, it cannot be gainsaid that substantial revenues for the government are raised by the imposition of such increased tariff rates or special duty.

4. ID.; ID.; GENERAL STANDARDS SET FOR THE EXERCISE OF THE AUTHORITY DELEGATED TO THE PRESIDENT. — Section 401 of the Tariff and Customs Code establishes general standards with which the exercise of the authority delegated by that provision to the President must be consistent: that authority must be exercised in "the interest of national economy, general welfare and/or national security." Petitioner, however, insists that the "protection of local industries" is the *only* permissible objective that can be secured by the exercise of that delegated authority, and that therefore "protection of local industries" is the sum total or the alpha and omega of "the national economy, general welfare and/or national security." We find it extremely difficult to take seriously such a confined and closed view of the legislative standards and policies summed up in Section 401. We believe, for instance, that the protection of consumers, who after all constitute the very great bulk of our population, is at the very least as important a dimension of "the national economy, general welfare and national security" as the protection of local industries. And so customs duties may be reduced or even removed precisely for the purpose of protecting consumers from the high prices and shoddy quality and inefficient service that tariff-protected and subsidized local manufacturers may otherwise impose upon the community.

5. ID.; ID.; TARIFF RATES AND CUSTOM DUTIES; LEVIED UPON ARTICLES NOT PRODUCED IN THE PHILIPPINES.— Tariff rates are commonly established and the corresponding customs duties levied and collected upon articles and goods which are not found at all and *not* produced in the Philippines. In such cases, customs duties may be seen to be imposed either for revenue purposes purely or perhaps, in certain cases, to discourage any importation of the items involved. In either case, it is clear that customs duties are levied and imposed entirely apart from whether or not there are any competing local industries to protect.

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6. POLITICAL LAW; CONSTITUTIONAL LAW; PRESIDENT; EXECUTIVE ORDERS NOS. 475 AND 478, CONSTITUTIONAL. — Executive Orders Nos. 475 and 478 which may be conceded to be substantially moved by the desire to generate additional public revenues, are not, for that reason alone, either constitutionally flawed, or legally infirm under Section 401 of the Tariff and Customs Code. Petitioner has not successfully overcome the presumptions of constitutionality and legality to which those Executive Orders are entitled.

APPEARANCES OF COUNSEL

Abraham C. La Vina for petitioner.

D E C I S I O N

FELICIANO, *J.*:

On 27 November 1990, the President issued Executive Order No. 438 which imposed, in addition to any other duties, taxes and charges imposed by law on all articles imported into the Philippines, an additional duty of five percent (5%) *ad valorem*. This additional duty was imposed across the board on all imported articles, including crude oil and other oil products imported into the Philippines. This additional duty was subsequently increased from five percent (5%) *ad valorem* to nine percent (9%) *ad valorem* by the promulgation of Executive Order No. 443, dated 3 January 1991.

On 24 July 1991, the Department of Finance requested the Tariff Commission to initiate the process required by the Tariff and Customs Code for the imposition of a specific levy on crude oil and other petroleum products, covered by HS Heading Nos. 27.09, 27.10 and 27.11 of Section 104 of the Tariff and Customs Code as amended. Accordingly, the Tariff Commission, following the procedure set forth in Section 401 of the Tariff and Customs Code, scheduled a public hearing to give interested parties an opportunity to be heard and to present evidence in support of their respective positions.

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Meantime, Executive Order No. 475 was issued by the President on 15 August 1991 reducing the rate of additional duty on all imported articles from nine percent (9%) to five percent (5%) *ad valorem*, except in the cases of crude oil and other oil products which continued to be subject to the additional duty of nine percent (9%) *ad valorem*.

Upon completion of the public hearings, the Tariff Commission submitted to the President a "Report on Special Duty on Crude Oil and Oil Products" dated 16 August 1991, for consideration and appropriate action. Seven (7) days later, the President issued Executive Order No. 478, dated 23 August 1991, which levied (in addition to the aforementioned additional duty of nine percent (9%) *ad valorem* and all other existing *ad valorem* duties) a *special duty* of ₱0.95 per liter or ₱151.05 per barrel of imported crude oil and ₱1.00 per liter of imported oil products.

In the present Petition for *Certiorari*, Prohibition and *Mandamus*, petitioner assails the validity of Executive Orders Nos. 475 and 478. He argues that Executive Orders Nos. 475 and 478 are violative of Section 24, Article VI of the 1987 Constitution which provides as follows:

> "Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments."

He contends that since the Constitution vests the authority to enact revenue bills in Congress, the President may not assume such power of issuing Executive Orders Nos. 475 and 478 which are in the nature of revenue-generating measures.

Petitioner further argues that Executive Orders Nos. 475 and 478 contravene Section 401 of the Tariff and Customs Code, which Section authorizes the President, according to petitioner, to increase, reduce or remove tariff duties or to impose additional duties *only* when necessary to protect local industries or products but *not* for the purpose of raising additional revenue for the government.

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Thus, petitioner questions first the constitutionality and second the legality of Executive Orders Nos. 475 and 478, and asks us to restrain the implementation of those Executive Orders. We will examine these questions in that order.

Before doing so, however, the Court notes that the recent promulgation of Executive Order No. 517 did not render the instant Petition moot and academic. Executive Order No. 517 which is dated 30 April 1992 provides as follows:

"Section 1. *Lifting of the Additional Duty*. — The additional duty in the nature of *ad valorem* imposed on all imported articles prescribed by the provisions of Executive Order No. 443, as amended, is hereby *lifted*; *Provided*, however, that the selected articles covered by HS Heading Nos. 27.09 and 27.10 of Section 104 of the Tariff and Customs Code, as amended, subject of Annex 'A' hereof, shall continue to be subject to the additional duty of nine (9%) percent *ad valorem*."

Under the above quoted provision, crude oil and other oil products continue to be subject to the additional duty of nine percent (9%) *ad valorem* under Executive Order No. 475 and to the special duty of ₱0.95 per liter of imported crude oil and ₱1.00 per liter of imported oil products under Executive Order No. 478.

Turning first to the question of constitutionality, under Section 24, Article VI of the Constitution, the enactment of appropriation, revenue and tariff bills, like all other bills is, of course, within the province of the Legislative rather than the Executive Department. It does not follow, however, that therefore Executive Orders Nos. 475 and 478, assuming they may be characterized as revenue measures, are prohibited to the President, that they must be enacted instead by the Congress of the Philippines. Section 28(2) of Article VI of the Constitution provides as follows:

"(2) *The Congress may, by law, authorize the President to fix* within specified limits, and subject to such limitations and restrictions as it may impose, *tariff rates*, import and export quotas, tonage and wharfage dues, and *other duties or imposts* within the framework of the national development program of the Government."(Italics supplied)

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There is thus explicit constitutional permission[1] to Congress to authorize the President "subject to such limitations and restrictions as [Congress] may impose" to fix "within specific limits" "tariff rates x x x and other duties or imposts x x x."

The relevant congressional statute is the Tariff and Customs Code of the Philippines, and Sections 104 and 401, the pertinent provisions thereof. These are the provisions which the President explicitly invoked in promulgating Executive Orders Nos. 475 and 478. Section 104 of the Tariff and Customs Code provides in relevant part:

"Sec. 104. All tariff sections, chapters, headings and subheadings and the rates of import duty under Section 104 of Presidential Decree No. 34 and all subsequent amendments issued under Executive Orders and Presidential Decrees are hereby adopted and form part of this Code.

There shall be levied, collected, and paid upon all imported articles the rates of duty indicated in the Section under this section except as otherwise specifically provided for in this Code: *Provided*, that, the maximum rate shall not exceed one hundred per cent *ad valorem*.

The rates of duty herein provided or subsequently fixed pursuant to Section Four Hundred One of this Code shall be subject to periodic investigation by the Tariff Commission and *may be revised by the President* upon recommendation of the National Economic and Development Authority.

xxx xxx xxx"

(Italics supplied)

Section 401 of the same Code needs to be quoted in full:

"Sec. 401. *Flexible Clause*. —

a. *In the interest of national economy, general welfare and/or national security*, and subject to the limitations herein prescribed, *the President*, upon recommendation of the National Economic and

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[1] This provision also existed in substantially identical terms in the 1973 Constitution (Article VIII, Section 17 [2]), and the 1935 Constitution (Article VI, Section 22 [2]).

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Development Authority (hereinafter referred to as NEDA), *is hereby empowered*: (1) *to increase*, reduce or remove *existing protective rates of import duty* (including any necessary change in classification). The existing rates may be increased or decreased but in no case shall the reduced rate of import duty be lower than the basic rate of ten (10) *per cent ad valorem*, nor shall the increased rate of import duty be higher than a maximum of one hundred (100) *per cent ad valorem*; (2) to establish import quota or to ban imports of any commodity, as may be necessary; and (3) *to impose an additional duty on all imports not exceeding ten (10) per cent ad valorem whenever necessary*; *Provided*, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One hundred and four of this Code, including those subsequently granted pursuant to this section.

b. Before any recommendation is submitted to the President by the NEDA pursuant to the provisions of this section, *except in the imposition of an additional duty not exceeding ten (10) per cent ad valorem*, the Commission shall conduct an investigation in the course of which they shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, produce evidence and to be heard. The Commission shall also hear the views and recommendations of any government office, agency or instrumentality concerned. The Commission shall submit their findings and recommendations to the NEDA within thirty (30) days after the termination of the public hearings.

c. The power of the President to increase or decrease rates of import duty within the limits fixed in subsection 'a' shall include the authority to modify the form of duty. In modifying the form of duty, the corresponding *ad valorem* or specific equivalents of the duty with respect to imports from the principal competing foreign country for the most recent representative period shall be used as bases.

d. The Commissioner of Customs shall regularly furnish the Commission a copy of all customs import entries as filed in the Bureau of Customs. The Commission or its duly authorized representatives shall have access to, and the right to copy all liquidated customs import entries and other documents appended thereto as finally filed in the Commission on Audit.

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e. The NEDA shall promulgate rules and regulations necessary to carry out the provisions of this section.

f. Any Order issued by the President pursuant to the provisions of this section shall take effect thirty (30) days after promulgation, except in the imposition of additional duty not exceeding ten (10) *per cent ad valorem* which shall take effect at the discretion of the President." (Italics supplied)

Petitioner, however, seeks to avoid the thrust of the delegated authorizations found in Sections 104 and 401 of the Tariff and Customs Code, by contending that the President is authorized to act under the Tariff and Customs Code *only* "*to protect local industries and products* for the sake of the national economy, general welfare and/or national security."[2] He goes on to claim that:

"E.O. Nos. 478 and 475 having *nothing to do whatsoever with the protection of local industries and products for the sake of national economy, general welfare and/or national security*. On the contrary, they work in reverse, especially as to crude oil, an essential product which we do not have to protect, since we produce only minimal quantities and have to import the rest of what we need.

These Executive Orders are avowedly solely to enable the government *to raise government finances*, contrary to Sections 24 and 28 (2) of Article VI of the Constitution, as well as to Section 401 of the Tariff and Customs Code."[3] (Italics supplied)

The Court is not persuaded. In the first place, there is nothing in the language of either Section 104 or of 401 of the Tariff and Customs Code that suggest such a sharp and absolute limitation of authority. The entire contention of petitioner is anchored on just two (2) words, one found in Section 401 (a) (1): "existing *protective* rates of import duty," and the second in the proviso found at the end of Section 401 (a): " *protection* levels granted in Section 104 of this Code xxx." We believe that the words "protective" and "protection" are simply not enough

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[2] Petition, p. 11; *Rollo*, p. 12; underlining in the original.

[3] *Rollo*, pp. 13-14.

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to support the very broad and encompassing limitation which petitioner seeks to rest on those two (2) words.

In the second place, petitioner's singular theory collides with a very practical fact of which this Court may take judicial notice — that the Bureau of Customs which administers the Tariff and Customs Code, is one of the two (2) principal traditional generators or producers of governmental revenue, the other being the Bureau of Internal Revenue. (There is a third agency, non-traditional in character, that generates lower but still comparable levels of revenue for the government — The Philippine Amusement and Games Corporation [PAGCOR].)

In the third place, customs duties which are assessed at the prescribed tariff rates are very much like taxes which are frequently imposed for both revenue-raising and for regulatory purposes.[4] Thus, it has been held that "*customs duties*" is "the name given to *taxes on the importation* and exportation *of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country."[5] The levying of customs duties on imported goods may have in some measure the effect of protecting local industries — where such local industries actually exist and are producing comparable goods.

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[4] *Lutz v. Araneta*, 98 Phil. 148 (1955); *Republic v. Bacolod-Murcia Miling Co., Inc., et al.*, 17 SCRA 632 (1966); *Progressive Development Corp. v. Quezon City*, 172 SCRA 629 (1989).

[5] *U.S. v. Sischo*, 262 Fed. 1001 (1919); *Flint v. Stone Tracey Company*, 220 US 107 (1910); *Keller-Dorian Corp. v. Commissioner of Internal Revenu*e, 153 F 2d 1006 (1946). The close affinity of "customs duties" and "taxes" was stressed almost a century ago in the following excerpt from *Pollock v. Farmers' Loan and Trust Company* (158 US 601; 39 Law Ed. 1108 [1895]):

"Cooley, on *Taxation*, p. 3, says that the word '*duty*' ordinarily 'means an *indirect tax, imposed on the importation, exportation,* or consumption *of goods*;' having 'a broader meaning than *customs*, which is a duty imposed on imports or exports;' that 'the term *impost* also signifies any *tax*, tribute *or duty*, but it is seldom applied to any but the indirect taxes. An *excise* duty is an inland impost, levied upon articles of manufacture or sale, and also upon licenses to pursue certain trades or to deal in certain commodities."(Underscoring partly in the original and partly supplied)

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Simultaneously, however, the very same customs duties inevitably have the effect of producing governmental revenues. Customs duties like internal revenue taxes are rarely, if ever, designed to achieve one policy objective only. Most commonly, customs duties, which constitute taxes in the sense of exactions the proceeds of which become public funds[6] — have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes and frequently, it is very difficult to say which, in a particular instance, is the dominant or principal objective. In the instant case, since the Philippines in fact produces ten (10) to fifteen percent (15%) of the crude oil consumed here, the imposition of increased tariff rates and a special duty on imported crude oil and imported oil products may be seen to have *some* "protective" impact upon indigenous oil production. For the effective price of imported crude oil and oil products is increased. At the same time, it cannot be gainsaid that substantial revenues for the government are raised by the imposition of such increased tariff rates or special duty.

In the fourth place, petitioner's concept which he urges us to build into our constitutional and customs law, is a stiflingly narrow one. Section 401 of the Tariff and Customs Code establishes general standards with which the exercise of the authority delegated by that provision to the President must be consistent: that authority must be exercised in "the interest of national economy, general welfare and/or national security." Petitioner, however, insists that the "protection of local industries" is the *only* permissible objective that can be secured by the exercise of that delegated authority, and that therefore "protection of local industries" is the sum total or the alpha and the omega of "the national economy, general welfare and/or national security." We find it extremely difficult to take seriously such a confined and closed view of the legislative standards and policies summed up in Section 401. We believe, for instance, that the protection of consumers, who after all constitute the very great bulk of our population, is at the very least as important a

[6] *Compania General de Tabacos de Filipinas v. City of Manila, et al.*, 118 Phil. 380 (1963).

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dimension of "the national economy, general welfare and national security" as the protection of local industries. And so customs duties may be reduced or even removed precisely for the purpose of protecting consumers from the high prices and shoddy quality and inefficient service that tariff-protected and subsidized local manufacturers may otherwise impose upon the community.

It seems also important to note that tariff rates are commonly established and the corresponding customs duties levied and collected upon articles and goods which are not found at all and *not* produced in the Philippines. The Tariff and Customs Code is replete with such articles and commodities: among the more interesting examples are *ivory* (Chapter 5, 5.10); *castoreum* or musk taken from the beaver (Chapter 5, 5.14); *olives* (Chapter 7, Notes); *truffles* or European fungi growing under the soil on tree roots (Chapter 7, Notes); *dates* (Chapter 8, 8.01); *figs* (Chapter 8, 8.03); *caviar* (Chapter 16, 16.01); *aircraft* (Chapter 88, 88.01); *special diagnostic instruments and apparatus for human medicine and surgery* (Chapter 90, Notes); *X-ray generators*; *X-ray tubes; X-ray screens, etc.* (Chapter 90, 90.20); *etc*. In such cases, customs duties may be seen to be imposed either for revenue purposes purely or perhaps, in certain cases, to discourage any importation of the items involved. In either case, it is clear that customs duties are levied and imposed entirely apart from whether or not there are any competing local industries to protect.

Accordingly, we believe and so hold that Executive Orders Nos. 475 and 478 which may be conceded to be substantially moved by the desire to generate additional public revenues, are not, for that reason alone, either constitutionally flawed, or legally infirm under Section 401 of the Tariff and Customs Code. Petitioner has not successfully overcome the presumptions of constitutionality and legality to which those Executive Orders are entitled.[7]

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[7] *National Waterworks and Sewerage Authority v. Reyes*, 22 SCRA 905 (1968); See also: *Victoriano v. Elizalde Rope Workers' Union*, 59 SCRA 54 (1974); *Ermita-Malate Hotel and Motel Operators Association Inc. v. City Mayor of Manila*, 20 SCRA 849 (1967).

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The conclusion we have reached above renders it unnecessary to deal with petitioner's additional contention that, should Executive Orders Nos. 475 and 478 be declared unconstitutional and illegal, there should be a roll back of prices of petroleum products equivalent to the "resulting excess money not be needed to adequately maintain the Oil Price Stabilization Fund (OPSF)."[8]

WHEREFORE, premises considered, the Petition for *Certiorari*, Prohibition and *Mandamus* is hereby *DISMISSED* for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and *Bellosillo, JJ.*, concur.

EN BANC

[G.R. No. 101526. July 3, 1992]

RODELA D. TORREGOZA, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; CANNOT BE COMPELLED BY *MANDAMUS* TO PERFORM A DUTY NOT MINISTERIAL.— The principal issue is whether or not the writ of *mandamus* may be issued by this Court to compel the respondent Commission to grant the petitioner the privilege of securing an appropriate civil service eligibility under Republic Act No. 6850. The answer to this is NO. The simple reason being that under

[8] *Rollo,* pp. 14-16.