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[G.R. No. 210588. November 29, 2016]

SECRETARY OF FINANCE CESAR B. PURISIMA AND COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, *petitioners, vs.* **REPRESENTATIVE CARMELO F. LAZATIN AND ECOZONE PLASTIC ENTERPRISES CORPORATION,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR DECLARATORY RELIEF; REQUISITES TO PROSPER; IN CASE THE PETITION FOR DECLARATORY RELIEF SPECIFICALLY INVOLVES A QUESTION OF CONSTITUTIONALITY, THE COURTS WILL NOT ASSUME JURISDICTION OVER THE CASE UNLESS THE PERSON CHALLENGING THE VALIDITY OF THE ACT POSSESSES THE REQUISITE LEGAL STANDING TO POSE THE CHALLENGE.— The party seeking declaratory relief must have a *legal interest* in the controversy for the action to prosper. This interest must be material not merely incidental. It must be an interest that which will be affected by the challenged decree, law or regulation. It must be a present substantial interest, as opposed to a mere expectancy or a future, contingent, subordinate, or consequential interest. Moreover, in case the petition for declaratory relief specifically involves a question of constitutionality, the courts will not assume jurisdiction over the case unless the person challenging the validity of the act possesses the requisite *legal standing* to pose the challenge. *Locus standi* is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed. We rule that the respondents satisfy these standards.

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2. ID.; CIVIL PROCEDURE; PARTIES; LEGAL STANDING; WHEN THE IMPLEMENTING RULES AND REGULATIONS ISSUED BY THE EXECUTIVE CONTRADICT OR ADD TO WHAT CONGRESS HAS PROVIDED BY LEGISLATION, THE ISSUANCE OF THESE RULES AMOUNTS TO AN UNDUE EXERCISE OF LEGISLATIVE POWER AND AN ENCROACHMENT OF CONGRESS' PREROGATIVES, WHICH MAY BE QUESTIONED BY MEMBERS OF CONGRESS.— In *Biraogo v. The Philippine Truth Commission*, we ruled that legislators have the legal standing to ensure that the prerogatives, powers, and privileges vested by the Constitution in their office remain inviolate. To this end, members of Congress are allowed to question the validity of any official action that infringes on their prerogatives as legislators. Thus, members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress. Legislative power is exclusively vested in the Legislature. When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives. To the same extent that the Legislature cannot surrender or abdicate its legislative power without violating the Constitution, so also is a constitutional violation committed when rules and regulations implementing legislative enactments are contrary to existing statutes. No law can be amended by a mere administrative rule issued for its implementation; administrative or executive acts are invalid if they contravene the laws or to the Constitution. Thus, the allegation that RR. 2-2012 — an executive issuance purporting to implement the provisions of the Tax Code — directly contravenes RA 9400 clothes a member of Congress with legal standing to question the issuance to prevent undue encroachment of legislative power by the executive.

3. ID.; ID.; ID.; ID.; FREEPORT AND ECONOMIC ZONE (FEZ) ENTERPRISES HAVE LEGAL STANDING TO QUESTION THE VALIDITY OF THE IMPLEMENTATION OF REVENUE REGULATION (RR) NO. 2-2012.— It is not disputed that RR 2-2012 relates to the imposition of VAT and excise tax and applies to all petroleum and petroleum products

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that are imported directly from abroad to the Philippines, **including FEZs**. As an enterprise located in the Clark FEZ, its importations of petroleum and petroleum products will be directly affected by RR 2-2012. Thus, its interest in the subject matter — a personal and substantial one — gives it legal standing to question the issuance's validity. [T]he respondents' respective interests in this case are sufficiently substantial to be directly affected by the implementation of RR 2-2012. The RTC therefore did not err when it gave due course to Lazatin's petition for declaratory relief as well as EPEC's petition-in-intervention.

4. TAXATION; TAX EXEMPTION; REPUBLIC ACT 7227 (BASES CONVERSION AND DEVELOPMENT ACT OF 1992), AS AMENDED BY REPUBLIC ACT 9400; FEZ ENTERPRISES ENJOY EXEMPTION FROM INTERNAL REVENUE TAXES, SUCH AS VAT AND EXCISE TAX, IMPOSED ON GOODS BROUGHT INTO THE FEZ.— [T]he Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the *transactions* that take place within its special jurisdiction, or the *persons/establishments* within the jurisdiction. From this perspective, the tax incentives enjoyed by *FEZ enterprises* must be understood to *necessarily include* the tax exemption of *importations of selected articles* into the FEZ. We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227 and, by extension, RA 9400. Thus, we recognized that *FEZ enterprises are exempt from both direct and indirect internal revenue taxes*. In particular, they are considered *VAT-exempt entities*. In line with this comprehensive interpretation, we rule that *the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax*.

5. ID.; ID.; ID.; ID.; THE TAXES IMPOSED BY SECTION 3 OF REVENUE REGULATION (RR) NO. 2-2012 ON THE IMPORTATION OF PETROLEUM AND PETROLEUM PRODUCTS BROUGHT INTO FEZ DIRECTLY CONTRAVENE THE EXEMPTIONS ENJOYED BY THE FEZ ENTERPRISES FROM VAT AND EXCISE TAX.— Since the tax exemptions enjoyed by FEZ enterprises under the law extend even to VAT and excise tax, xxx, it follows and we accordingly rule that *the taxes imposed by Section 3 of RR*

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2-2012 directly contravene these exemptions. ***First***, the regulation erroneously considers petroleum and petroleum products brought into a FEZ as taxable importations. ***Second***, it unreasonably burdens FEZ enterprises by making them pay the corresponding taxes — an obligation from which the law specifically exempts them — even if there is a subsequent opportunity to refund the payments made.

6. ID.; ID.; ID.; ID.; THE ACT OF BRINGING THE GOODS INTO AN FEZ IS NOT A TAXABLE IMPORTATION; AS LONG AS THE GOODS REMAIN IN THE FEZ OR RE-EXPORTED TO ANOTHER FOREIGN JURISDICTION, THEY SHALL CONTINUE TO BE TAX-FREE, ONCE THE GOODS ARE INTRODUCED INTO THE PHILIPPINE CUSTOMS TERRITORY, IT CEASES TO ENJOY THE TAX PRIVILEGES ACCORDED TO FEZS, AND SHALL THEN BE CONSIDERED AS AN IMPORTATION SUBJECT TO ALL APPLICABLE NATIONAL INTERNAL REVENUE TAXES AND CUSTOMS DUTIES.— [W]hen goods (*e.g.*, petroleum and petroleum products) are brought into an FEZ, *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws. [G]oods brought into and traded within an FEZ are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to FEZs exempting the *importation itself* from taxes and duties. *Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-exported to another foreign jurisdiction, they shall continue to be tax-free*. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an *importation* subject to all applicable national internal revenue taxes and customs duties.

7. ID.; ID.; ID.; ID.; ESSENCE OF TAX EXEMPTION; THE REFUND MECHANISM PROVIDED BY RR 2-2012 CONTRADICTS THE ESSENCE OF FEZ ENTERPRISES' EXEMPTION FROM THE IMPOSITION AND PAYMENT OF A PARTICULAR TAX.— [T]the essence of a tax exemption is the *immunity* or *freedom* from a charge or burden to which

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others are subjected. It is a *waiver* of the government's right to collect the amounts that would have been collectible under our tax laws. *Thus, when the law speaks of a tax exemption, it should be understood as freedom from the imposition and payment of a particular tax.* Based on this premise, we rule that the *refund mechanism provided by RR 2-2012 does not amount to a tax exemption*. Even if the possibility of a subsequent refund exists, the fact remains that FEZ enterprises must still spend money and other resources to pay for something they should be immune to in the first place. This completely contradicts the essence of their tax exemption.

8. **ID.; ID.; ID.; ID.; FEZ ENTERPRISES HAVE NO DUTY TO PROVE THEIR ENTITLEMENT TO TAX EXEMPTION FIRST BEFORE FULLY ENJOYING THE SAME, AS IT IS THE TAX AUTHORITIES WHICH MUST DETERMINE FIRST IF A PERSON IS LIABLE FOR A PARTICULAR TAX, BEFORE ASKING HIM TO PROVE HIS EXEMPTION THEREFROM. —** [W]e cannot agree with the view that FEZ enterprises have the duty to prove their entitlement to tax exemption first before fully enjoying the same; we find it illogical to determine whether a person is exempted from tax without first determining if he is subject to the tax being imposed. We have reminded the tax authorities to determine first if a person is liable for a particular tax, applying the rule of strict interpretation of tax laws, before asking him to prove his exemption therefrom. Indeed, as entities exempted on taxes on importations, FEZ enterprises are clearly beyond the coverage of any law imposing those very charges. There is no justifiable reason to require them to prove that they are exempted from it. More importantly, we have also recognized that the exemption from local and national taxes granted under RA 7227, as amended by RA 9400, are *ipso facto* accorded to FEZs. In case of doubt, conflicts with respect to such tax exemption privilege shall be resolved in favor of these special territories.

9. **ID.; ID.; ID; ID.; REGULATIONS MAY NOT ENLARGE, ALTER, RESTRICT, OR OTHERWISE GO BEYOND THE PROVISIONS OF THE LAW THEY ADMINISTER, AND ADMINISTRATORS AND IMPLEMENTORS CANNOT ENGRAFT ADDITIONAL REQUIREMENTS NOT CONTEMPLATED BY THE LEGISLATURE.—** The power of the petitioners to interpret tax laws is not absolute. The rule

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is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature. It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.* While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.

10. ID.; ID.; ID.; ID.; TAX EXEMPTIONS ARE GRANTED FOR SPECIFIC PUBLIC INTERESTS THAT THE LEGISLATURE CONSIDERS SUFFICIENT TO OFFSET THE MONETARY LOSS IN THE GRANT OF EXEMPTIONS.— Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.

11. ID.; ID.; THE IMPOSITION OF TAXES, AS WELL AS THE GRANT AND WITHDRAWAL OF TAX EXEMPTIONS, SHALL ONLY BE VALID PURSUANT TO A LEGISLATIVE ENACTMENT; RR 2-2012 DECLARED NULL AND VOID.— [T]he State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment. As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative to FEZ enterprises, the petitioners have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers. In these lights, we hereby rule and declare that RR 2-2012 is null and void.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Aranas Law Office for respondent Lazatin.
Medina, Miclat & Panaligan for respondent Ecozone Plastic Enterprises Corporation.

D E C I S I O N

BRION, *J.*:

This is a direct recourse to this Court from the Regional Trial Court (*RTC*), Branch 58, Angeles City, through a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court on a pure question of law. The petition seeks the reversal of the November 8, 2013 decision[2] of the RTC in SCA Case No. 12-410. In the assailed decision, the RTC declared Revenue Regulation (*RR*) No. 2-2012 unconstitutional and without force and effect.

The Facts

In response to reports of smuggling of petroleum and petroleum products and to ensure the correct taxes are paid and collected, petitioner Secretary of Finance Cesar V. Purisima — pursuant to his authority to interpret tax laws[3] and upon the recommendation of petitioner Commissioner of Internal Revenue (*CIR*) Kim S. Jacinto-Henares signed RR 2-2012 on February 17, 2012.

The RR requires the payment of value-added tax (*VAT*) and excise tax on the importation of all petroleum and petroleum

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[1] *Rollo*, pp. 47-85.

[2] Penned by RTC Presiding Judge Philbert I. Iturralde; *id*. at 95-125.

[3] Section 4 of the 1997 National Internal Revenue Code (*Tax Code*) provides, "The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

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products coming directly from abroad and brought into the Philippines, including Freeport and economic zones (*FEZs*).[4]

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[4] SECTION 3. TAX TREATMENT OF ALL PETROLEUM AND PETROLEUM PRODUCTS IMPORTED AND ITS SUBSEQUENT EXPORTATION OR SALES TO FREEPORT AND ECONOMIC ZONE LOCATORS OR OTHER PERSONS/ENTITIES; REFUND OF TAXES PAID; AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) AND OTHER ADMINISTRATIVE REQUIREMENTS. — The Value-Added and Excise taxes which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

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

In the event that the said Freeport/Economic zone registered enterprise shall subsequently sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations) or another Freeport/Economic zone registered enterprise not enjoying tax privileges, no refund for excise taxes shall be granted to the importer for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the excise taxes due thereon have been paid, otherwise the excise taxes due on said goods shall be collected from said possessor/user.

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It then allows the credit or refund of any VAT or excise tax paid *if the taxpayer proves* that the petroleum previously brought in has been sold to a duly registered FEZ locator and used pursuant to the registered activity of such locator.[5]

In other words, an FEZ locator must first pay the required taxes upon entry into the FEZ of a petroleum product, and must thereafter prove the use of the petroleum product for the locator's registered activity in order to secure a credit for the taxes paid.

On March 7, 2012, Carmelo F. Lazatin, in his capacity as Pampanga First District Representative, filed a petition for prohibition and injunction[6] against the petitioners to annul and set aside RR 2-2012.

Lazatin posits that Republic Act No. (RA) 9400[7] treats the Clark Special Economic Zone and Clark Freeport Zone (together

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In case of sale/introduction of petroleum and petroleum products, or part of the volume thereof, by a Freeport/Economic zone registered enterprise, or part/volume thereof, into the customs territory or to a Freeport/Economic zone registered enterprise not enjoying tax privileges, or any sale to an entity not enjoying 0% VAT rate, the seller shall be liable for 12% VAT. In this instance, no refund for VAT shall be allowed the importer or an assessment for VAT shall be issued to the said importer, if the refund has already been granted, and another assessment for VAT shall be made against the seller.

For each and every importation of petroleum and petroleum products, the importer thereof shall secure the prescribed ATRIG from the BIR's Excise Tax Regulatory Division (ETRD), and pay the Value-Added and excise taxes, as computed, before the release thereof from the BOC's custody. In case of subsequent sale/introduction to customs territory by a Freeport/ Economic zone-registered enterprise of petroleum and petroleum products, the importer shall secure the necessary Withdrawal Certificate.

For excise tax purposes, all importers of petroleum and petroleum products shall secure a Permit to Operate with the BIR's ETRD. Such permit shall prescribe the appropriate terms and conditions which shall include, among others, the issuance of a Withdrawal Certificate and the submission of liquidation reports, for the Permitee's strict compliance.

[5] *Id*.

[6] *Rollo*, pp. 131-148.

[7] Also known as "An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes," dated March 20, 2007.

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hereinafter referred to as *Clark FEZ*) as a separate customs territory and allows tax and duty-free importations of raw materials, capital and equipment into the zone. Thus, the imposition of VAT and excise tax, even on the importation of petroleum products into FEZs (like *Clark FEZ*), directly contravenes the law.

The respondent Ecozone Plastic Enterprises Corporation *(EPEC*) sought to intervene in the proceedings as a co-petitioner and accordingly entered its appearance and moved for leave of court to file its petition-in-intervention.[8]

EPEC claims that, as a Clark FEZ locator, it stands to suffer when RR 2-2012 is implemented. EPEC insists that RR 2-2012's mechanism of requiring even locators to pay the tax first and to subsequently claim a credit or to refund the taxes paid effectively removes the locators' tax-exempt status.

The RTC initially issued a temporary restraining order to stay the implementation of RR 2-2012. It eventually issued a writ of preliminary injunction in its order dated April 4, 2012.

The petitioners questioned the issuance of the writ. On May 17, 2012, they filed a petition for *certiorari*[9] before the Court of Appeals (CA) assailing the RTC's order. The CA granted the petition[10] and denied the respondents' subsequent motion for reconsideration.[11]

The respondents stood their ground by filing a petition for review on *certiorari* before this Court (G.R. No. 208387) to reinstate the RTC's injunction against the implementation of RR 2-2012, and by moving for the issuance of a temporary restraining order and/or writ of preliminary injunction. We denied

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[8] On April 2, 2012, EPEC filed its Entry of Appearance with Motion for Leave to File Petition-in-Intervention (RTC decision, *id*. at 106).

[9] *Rollo*, pp. 174-205.

[10] In CA decision dated February 14, 2013, *id*. at 207-218.

[11] In CA resolution dated July 29, 2013, *id*. at 220-221.

the motion but nevertheless required the petitioners to comment on the petition.

The proceedings before the RTC in the meanwhile continued. On April 18, 2012, petitioner Lazatin amended his original petition, converting it to a petition for declaratory relief.[12] The RTC admitted the amended petition and allowed EPEC to intervene.

In its decision dated November 8, 2013, the RTC ruled in favor of Lazatin and EPEC.

First, on the procedural aspect, the RTC held that the original petition's amendment is allowed by the rules and that amendments are largely preferred; it allowed the amendment in the exercise of its sound judicial discretion to avoid multiplicity of suits and to give the parties an opportunity to thresh out the issues and finally reach a conclusion.[13]

Second, the RTC held that Lazatin and EPEC had legal standing to question the validity of RR 2-2012. Lazatin's allegation that RR 2-2012 effectively amends and modifies RA 9400 gave him standing as a legislator: the amendment of a tax law is a power that belongs exclusively to Congress. Lazatin's allegation, according to the RTC, sufficiently shows how his rights, privileges, and prerogatives as a member of Congress were impaired by the issuance of RR 2-2012.

The RTC also ruled that the case warrants a relaxation on the rules on legal standing because the issues touched upon are of transcendental importance. The trial court considered the encompassing effect that RR 2-2012 may have in the numerous freeport and economic zones in the Philippines, as well as its potential impact on hundreds of investors operating within the zones.

The RTC then held that even if Lazatin does not have legal standing, EPEC's intervention cured this defect: EPEC, as a

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[12] *Id*. at 223-258.

[13] RTC Decision, *id*. at 116-117.

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locator within the Clark FEZ, would be adversely affected by the implementation of RR 2-2012.

Finally, the RTC declared RR 2-2012 unconstitutional. RR 2-2012 violates RA 9400 because it imposes taxes that, by law, are not due in the first place.[14] Since RA 9400 clearly grants tax and duty-free incentives to Clark FEZ locators, a revocation of these incentives by an RR directly contravenes the express intent of the Legislature.[15] In effect, the petitioners encroached upon the prerogative to enact, amend, or repeal laws, which the Constitution exclusively granted to Congress.

The Petition

The petitioners anchor their present petition on two arguments: 1) respondents have *no legal standing*, and 2) RR 2-2012 is *valid and constitutional*.

The petitioners submit that the Lazatin and EPEC do not have legal standing to assail the validity of RR 2-2012.

First, the petitioners claim that Lazatin does not have the requisite legal standing as he failed to exactly show how the implementation of RR 2- 2012 would impair the exercise his official functions. Respondent Lazatin merely generally alleged that his constitutional prerogatives to pass or amend laws were gravely impaired or were about to be impaired by the issuance of RR 2-2012. He did not specify the power that he, as a legislator, would be encroached upon.

While the Clark FEZ is within the district that respondent Lazatin represents, the petitioners emphasize that Lazatin failed to show that he is authorized to file a case on behalf of the locators in the FEZ, the local government unit, or his constituents in general.[16] To the petitioners, if RR 2- 2012 ever caused injury to the locators or to any of Lazatin's constituents, only these injured parties possess the personality to question the petitioners'

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[14] *Id*. at 112.

[15] *Id*. at 114.

[16] Petition, *id*. at 59-60.

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actions; respondent Lazatin cannot claim this right on their behalf.[17]

The petitioners claim, too, that the RTC should not have brushed aside the rules on standing on account of transcendental importance. To them, this case does not involve public funds, only a speculative loss of profits upon the implementation of RR 2-2012; nor is Lazatin a party with more direct and specific interest to raise the issues in his petition.[18] Citing *Senate v. Ermita*,[19] the petitioners argue that the rules on standing cannot be relaxed.

Second, petitioners also argue that EPEC does not have legal standing to intervene. That EPEC will ultimately bear the VAT and excise tax as an end-user, is misguided.[20] The burden of payment of VAT and excise tax may be shifted to the buyer[21] and this burden, from the point of view of the transferee is no longer a tax but merely a component of the cost of goods purchased. The statutory liability for the tax remains with the seller. Thus, EPEC cannot say that when the burden is passed on to it, RR 2-2012 effectively imposes tax on it as a Clark FEZ locator.

The petitioners point out that RR 2-2012 imposes an "advance tax" only upon importers of petroleum products. If EPEC is indeed a locator, then it enjoys tax and duty exemptions granted by RA 9400 so long as it does not bring the petroleum or petroleum products to the Philippine customs territory.[22]

The petitioners legally argue that RR 2-2012 is valid and constitutional.

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[17] Id. at 60.

[18] *Rollo*, p. 62.

[19] G.R. No. 169777, April 20, 2006, 488 SCRA 1, 3.

[20] *Rollo*, pp. 63-64.

[21] The petitioner points out that VAT and excise tax are indirect taxes.

[22] *Rollo*, p. 67.

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First, petitioner submit that RR 2-2012's issuance and implementation are within their powers to undertake.[23] RR 2-2012 is an administrative issuance that enjoys the presumption of validity in the manner that statutes enjoy this presumption; thus, it cannot be nullified without clear and convincing evidence to the contrary.[24]

Second, petitioners contend that while RA 9400 does grant tax and customs duty incentives to Clark FEZ locators, there are conditions before these benefits may be availed of. The locators cannot invoke outright exemption from VAT and excise tax on its importations without first satisfying the conditions set by RA 9400, that is, the importation must not be removed from the FEZ and introduced into the Philippine customs territory.[25]

These locators enjoy what petitioners call a *qualified tax exemption*. They must first pay the corresponding taxes on its imported petroleum. Then, they must submit the documents required under RR 2-2012. If they have sufficiently shown that the imported products have not been removed from the FEZ, their earlier payment shall be subject to a refund.

The petitioners lastly argue that RR 2-2012 does not withdraw the locators' tax exemption privilege. The regulation simply requires proof that a locator has complied with the conditions for tax exemption. If the locator cannot show that the goods were retained and/or consumed within the FEZ, such failure creates the presumption that the goods have been introduced into the customs territory without the appropriate permits.[26] On the other hand, if they have duly proven the disposition of the goods within the FEZ, their "advance payment" is subject

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[23] *Id*. at 68.

[24] *Id*. at 67-68 citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730.

[25] *Id*. at 73.

[26] *Id*. at 75.

to a refund. Thus, to the petitioners, to the extent that a refund is allowable, there is in reality a tax exemption.[27]

Counter-arguments

Respondents Lazatin and EPEC, maintaining that they have standing to question its validity, insist that RR 2-2012 is unconstitutional.

Respondents have standing as lawmaker and FEZ locator.

The respondents argue that a member of Congress has standing to protect the prerogatives, powers, and privileges vested by the Constitution in his office.[28] As a member of Congress, his standing to question executive issuances that infringe on the right of Congress to enact, amend, or repeal laws has already been recognized.[29] He suffers substantial injury whenever the executive oversteps and intrudes into his power as a lawmaker.[30]

On the other hand, the respondents point out that RR 2-2012 explicitly covers FEZs. Thus, being a Clark FEZ locator, EPEC is among the many businesses that would have been directly affected by its implementation.[31]

RR 2-2012 illegally imposes taxes on Clark FEZs.

The respondents underscore that RA 9400 provides FEZ locators certain incentives, such as tax- and duty-free importations of raw materials and capital equipment. These provisions of the law must be interpreted in a way that will give full effect

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[27] *Id*. at 76 citing *CIR v. A.D. Guerrero*, G.R. No. L-20812, September 22, 1967, 21 SCRA 180, 183.

[28] *Id*. at 365.

[29] *Id*. at 366 citing *Biraogo v. The Philippine Truth Commission*, 651 Phil. 374 (2010).

[30] *Id*. at 367 citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506-507.

[31] *Id*. at 368.

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to law's policy and objective, which is to maximize the benefits derived from the FEZs in promoting economic and social development.[32]

They admit that the law subjects to taxes and duties the goods that were brought into the FEZ and subsequently introduced to the Philippine customs territory. However, contrary to petitioners' position that locators' tax and duty exemptions are *qualified*, their incentives apply *automatically*.

According to the respondents, petitioners' interpretation of the law contravenes the policy laid down by RA 9400, because it makes the incentives subject to a suspensive condition. They claim that the condition — the removal of the goods from the FEZ and their subsequent introduction to the customs territory — is resolutory; locators enjoy the granted incentives *upon bringing the goods into the FEZ*. It is only *when the goods are shown to have been brought into the customs territory* will the proper taxes and duties have to be paid.[33] RR 2-2012 reverses this process by requiring the locators to pay "advance" taxes and duties first and to subsequently prove that they are entitled to a refund, thereafter.[34] RR 2-2012 indeed allows a refund, but a refund of taxes that were not due in the first place.[35]

The respondents add that even the refund mechanism under RR 2-2012 is problematic. They claim that RR 2-2012 only allows a refund when the petroleum products brought into the FEZ are subsequently *sold* to FEZ locators or to entities that similarly enjoy exemption from direct and indirect taxes. The issuance does not envision a situation where the petroleum products are directly brought into the FEZ and are *consumed* by the same entity/locator.[36] Further, the refund process takes

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[32] *Id*. at 369 citing *CIR v. Seagate Technology*, G.R. No. 153866, February 11, 2005, 451 SCRA 132-133; *CIR v. Toshiba*, 503 Phil. 823-825 (2005).

[33] *Id*. at 374.

[34] *Id*. at 375.

[35] *Id*. at 378.

[36] *Id*. at 377.

a considerable length of time to secure, thus requiring cash outlay on the part of locators;[37] even when the claim for refund is granted, the refund will not be in cash, but in the form of a Tax Credit Certificate (*TCC*).[38]

As the challenged regulation directly contravenes incentives legitimately granted by a legislative act, the respondents argue that in issuing RR 2-2012, the petitioners not only encroached upon congressional prerogatives and arrogated powers unto themselves; they also effectively violated, brushed aside, and rendered nugatory the rigorous process required in enacting or amending laws.[39]

Issues

We shall decide the following issues:

I. Whether respondents Lazatin and EPEC have legal standing to bring the action of declaratory relief; and

II. Whether RR 2-2012 is valid and constitutional.

The Court's Ruling

We do not find the petition meritorious.

I. Respondents have legal standing to file petition for declaratory relief.

The party seeking declaratory relief must have a *legal interest* in the controversy for the action to prosper.[40] This interest must be material not merely incidental. It must be an interest that which will be affected by the challenged decree, law or regulation. It must be a present substantial interest, as opposed to a mere

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[37] *Id*.

[38] *Id*.

[39] *Id*. at 381.

[40] *Commissioner of Customs v. Hypermix Feeds Corp*., G.R. No. 179579, February 1, 2012, 664 SCRA 666.

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expectancy or a future, contingent, subordinate, or consequential interest.[41]

Moreover, in case the petition for declaratory relief specifically involves a question of constitutionality, the courts will not assume jurisdiction over the case unless the person challenging the validity of the act possesses the requisite *legal standing* to pose the challenge.[42]

Locus standi is a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the challenged governmental act. The question is whether the challenging party alleges such personal stake in the outcome of the controversy so as to assure the existence of concrete adverseness that would sharpen the presentation of issues and illuminate the court in ruling on the constitutional question posed.[43]

We rule that the respondents satisfy these standards.

Lazatin has legal standing as a legislator.

Lazatin filed the petition for declaratory relief before the RTC in his capacity as a member of Congress.[44] He alleged that RR 2-2012 was issued directly contravening RA 9400, a legislative enactment. Thus, the regulation encroached upon the Congress' exclusive power to enact, amend, or repeal laws.[45] According to Lazatin, a member of Congress has standing to

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[41] *Galicto v. Aquino*, G.R. No. 193978, February 28, 2012, 667 SCRA 150-152, citing *Miñosa v. Lopez., et al.*, G.R. No. 170914, April 13, 2011, 648 SCRA 684.

[42] *Jumamil v. Cafe*, G.R. No. 144570, September 21, 2005, 70 SCRA 475.

[43] *Galicto v. Aquino, supra*, citing *Southern Hemisphere Engagement Network, Inc. v. Anti Terrorism Council*, G.R. Nos. 178552, 178554, 178581, 178890, 179157 and 179461, October 5, 2010, 632 SCRA 146.

[44] *Rollo*, p. 224.

[45] *Id*. at 228.

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challenge the validity of an executive issuance if it tends to impair his prerogatives as a legislator.[46]

We agree with Lazatin.

In *Biraogo v. The Philippine Truth Commission*,[47] we ruled that legislators have the legal standing to ensure that the prerogatives, powers, and privileges vested by the Constitution in their office remain inviolate. To this end, members of Congress are allowed to question the validity of any official action that infringes on their prerogatives as legislators.[48]

Thus, members of Congress possess the legal standing to question acts that amount to a usurpation of the legislative power of Congress.[49] Legislative power is exclusively vested in the Legislature. When the implementing rules and regulations issued by the Executive contradict or add to what Congress has provided by legislation, the issuance of these rules amounts to an undue exercise of legislative power and an encroachment of Congress' prerogatives.

To the same extent that the Legislature cannot surrender or abdicate its legislative power without violating the Constitution,[50] so also is a constitutional violation committed when rules and regulations implementing legislative enactments are contrary to existing statutes. No law can be amended by a mere administrative rule issued for its implementation; administrative or executive acts are invalid if they contravene the laws or to the Constitution.[51]

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[46] *Id*. at 229.

[47] *Supra* note 29.

[48] *Id*. citing *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[49] *Id*. citing *Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, 520.

[50] *Lokin v. Comelec*, G.R. Nos. 179431-32, June 22, 2010, 621 SCRA 385.

[51] *Id*. citing *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 349-350.

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Thus, the allegation that RR. 2-2012 — an executive issuance purporting to implement the provisions of the Tax Code — directly contravenes RA 9400 clothes a member of Congress with legal standing to question the issuance to prevent undue encroachment of legislative power by the executive.

EPEC has legal standing as a Clark FEZ locator.

EPEC intervened in the proceedings before the RTC based on the allegation that, as a Clark FEZ locator, it will be directly affected by the implementation of RR 2-2012.[52]

We agree with EPEC.

It is not disputed that RR 2-2012 relates to the imposition of VAT and excise tax and applies to all petroleum and petroleum products that are imported directly from abroad to the Philippines, **including FEZs**.[53]

As an enterprise located in the Clark FEZ, its importations of petroleum and petroleum products will be directly affected by RR 2-2012. Thus, its interest in the subject matter — a personal and substantial one — gives it legal standing to question the issuance's validity.

In sum, the respondents' respective interests in this case are sufficiently substantial to be directly affected by the implementation of RR 2-2012. The RTC therefore did not err when it gave due course to Lazatin's petition for declaratory relief as well as PEC's petition-in-intervention.

In light of this ruling, we see no need to rule on the claimed transcendental importance of the issues raised.

II. RR 2-2012 is invalid and unconstitutional.

On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon

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[52] *Supra* note 31.

[53] See Section 3, RR 2-2012.

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FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law (*i.e.*, RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.

FEZ enterprises enjoy tax- and duty-free incentives on its importations.

In 1992, Congress enacted RA 7227 otherwise known as the "Bases Conversion and Development Act of 1992" to enhance the benefits to be derived from the Subic and Clark military reservations.[54] RA 7227 established the Subic Special economic zone and granted such special territory various tax and duty incentives.

To effectively extend the same benefits enjoyed in Subic to the Clark FEZ, the legislature enacted RA 9400 to amend RA 7227.[55] Subsequently, the Department of Finance issued Department Order No. 3-2008[56] to implement RA 9400 (*Implementing Rules*).

Under RA 9400 and its Implementing Rules, Clark FEZ is considered a customs territory *separate* and *distinct* from the Philippines customs territory. Thus, as opposed to *importations* into and *establishments* in the Philippines customs territory,[57]

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[54] Section 2, RA 7227.

[55] Hereinafter, we will refer to RA 7227, as amended, when discussing benefits accorded to FEZs, in general. On the other hand, we will refer to RA 9400 when discussing benefits specifically in relation to the Clark FEZ.

[56] Entitled "Rules and Regulations to Implement Republic Act No. 9400" (*Implementing Rules*) issued by the Department of Finance, dated February 13, 2008, and signed by then Secretary of Finance Margarito B. Teves.

[57] Section 2(oo) of the Implementing Rules defines *customs territory* as "the national territory of the Philippines outside of the boundaries of the Ecozones or Freeport Zones, duly identified or proclaimed in accordance with RA 7227, where the customs and tax laws of the Philippines are in full force or effect, and outside of those areas specifically declared by other laws and/or presidential proclamations to have the status of special economic zones and/or freeports."

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which are fully subject to Philippine customs and tax laws, *importations* into and *establishments* located within the Clark FEZ (*FEZ Enterprises*)[58] enjoy special incentives, including tax and duty-free importation.[59] More specifically, Clark FEZ enterprises shall be entitled to the *freeport status* of the zone and a *5% preferential income tax rate* on its gross income, in lieu of national and local taxes.[60]

RA 9400 and its Implementing Rules grant the following:

First, the law provides that *importations of raw materials and capital equipment* into the FEZs shall be *tax- and duty-free*. It is the *specific transaction* (*i.e.*, importation) that is exempt from taxes and duties.

Second, the law also grants *FEZ enterprises tax- and duty-free importation* and a preferential rate in the payment of income tax, in lieu of all national and local taxes. These incentives exempt the *establishment* itself from taxation.

Thus, the Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the *transactions* that take place within its special jurisdiction, or the *persons/establishments* within the jurisdiction. From this perspective, the tax incentives enjoyed by *FEZ enterprises* must be understood to *necessarily include* the tax exemption of *importations of selected articles* into the FEZ.

We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227[61] and, by extension, RA 9400. Thus, we recognized that *FEZ enterprises are exempt*

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[58] The parties in this case have liberally used the term "locator" to denote an entity located within the FEZ. However. we shall hereinafter use "FEZ enterprise" as explicitly defined and used by the Implementing Rules.

[59] Section 2(aa), Implementing Rules.

[60] Section 4(d), Implementing Rules *cf* Section 15, RA 9400.

[61] *Coconut Oil Refiners Association v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 64-65.

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from both direct and indirect internal revenue taxes.[62] In particular, they are considered *VAT-exempt entities*.[63]

In line with this comprehensive interpretation, we rule that *the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax*.

RR 2-2012 illegally imposes VAT and excise tax on goods brought into the FEZs.

Section 3 of RR 2-2012 provides the following:

First, whenever petroleum and petroleum products are *imported* and/or *brought directly* to the Philippines, the *importer* of these goods is required to pay the corresponding **VAT** and **excise tax** due on the importation.

Second, the importer, as the payor of the taxes, may subsequently seek a *refund* of the amount previously paid by filing a corresponding claim with the Bureau of Customs (*BOC*).

Third, the claim shall only be granted upon showing that the *necessary condition* has been fulfilled.

At first glance, this imposition — a mere tax administration measure according to the petitioners — appears to be consistent with the taxation of similar imported articles under the Tax Code, specifically under its Sections 107[64] and 148[65] (in relation with Sections 129[66] and 131[67]) .

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[62] *Supra* note 32.

[63] *Id*.

[64] SEC. 107. Value-Added Tax on Importation of Goods. — (A) In General.— There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) [47] based on the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any xxx

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However, RR 2-2012 *explicitly covers even petroleum and petroleum products imported and/or brought into the various*

(B) Transfer of Goods by Tax-exempt Persons.— In the case of tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

[65] SEC. 148. Manufactured Oils and Other Fuels.— There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such: (a) Lubricating oils and greases, including but not limited to, basestock for lube oils and greases, high vacuum distillates, aromatic extracts, and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight, Four pesos and fifty centavos (₱4.50): Provided, however, That the excise taxes paid on the purchased feedstock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax due therefrom: Provided, further, That lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid shall no longer be subject to excise tax: Provided, finally, That locally produced or imported oils previously taxed as such but are subsequently reprocessed, re-refined or recycled shall likewise be subject to the tax imposed under this Section.

(b) Processed gas, per liter of volume capacity, Five centavos (₱0.05);

(c) Waxes and petrolatum, per kilogram, Three pesos and fifty centavos (₱3.50);

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, Five centavos (₱0.05): Provided. That unless otherwise provided by special laws, if the denatured alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For purposes of this Subsection, the removal of denatured alcohol of not less than one hundred eighty degrees (180o) proof (ninety percent (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown otherwise;

(e) Naphtha, regular gasoline and other similar products of distillation, per liter of volume capacity, Four pesos and thirty five centavos (₱4.35): Provided, however, That naphtha, when used as a raw material in the production of petrochemical products or as replacement fuel for natural-gas-fired-combined cycle power plant, in lieu of locally-extracted natural gas during the non-

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FEZs in the Philippines. Hence, when an FEZ enterprise brings petroleum and petroleum products into the FEZ, under RR 2-2012,

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availability thereof, subject to the rules and regulations to be promulgated by the Secretary of Energy, in consultation with the Secretary of Finance, per liter of volume capacity, Zero (₱0.00): Provided, further, That the by-product including fuel oil, diesel fuel, kerosene, pyrolysis gasoline, liquefied petroleum gases and similar oils having more or less the same generating power, which are produced in the processing of naphtha into petrochemical products shall be subject to the applicable excise tax specified in this Section, except when such by-products are transferred to any of the local oil refineries through sale, barter or exchange, for the purpose of further processing or blending into finished products which are subject to excise tax under this Section;

(f) Leaded premium gasoline, per liter of volume capacity, Five pesos and thirty-five centavos (₱5.35); unleaded premium gasoline, per liter of volume capacity, Four pesos and thirty-five centavos (₱4.35);

(g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (₱3.67);

(h) Kerosene, per liter of volume capacity, Zero (₱0.00): Provided, That kerosene, when used as aviation fuel, shall be subject to the same tax on aviation turbo jet fuel under the preceding paragraph (g), such tax to be assessed on the user thereof;

(i) Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, One peso and zero (₱0.00);

(j) Liquefied petroleum gas, per liter, Zero (₱0.00): Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the excise tax on diesel fuel oil;

(k) Asphalts, per kilogram, Fifty-six centavos (₱0.56); and

(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, zero (₱0.00).

[66] SEC. 129. Goods subject to Excise Taxes. — Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as 'ad valorem tax.'

[67] (A) Persons Liable. — Excise taxes on imported articles shall be paid by the owner or importer to the Custom Officers, conformably with the

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it shall be considered an importer liable for the taxes due on these products.

The crux of the controversy can be found in this feature of the challenged regulation.

The petitioners assert that RR 2-2012 simply implements the provisions of the Tax Code on collection of internal revenue taxes, more specifically VAT and excise tax, on the importation of petroleum and petroleum products. To them, FEZ enterprises enjoy a *qualified tax exemption* such that they have to pay the tax due on the importation first, and thereafter claim a refund, which shall be allowed only upon showing that the goods were not introduced to the Philippine customs territory.

On the other hand, the respondents contend that RR 2-2012 imposes taxes on FEZ enterprises, which in the first place are not liable for taxes. They emphasize that the tax incentives under RA 9400 apply *automatically* upon the importation of the goods. The proper taxes on the importation shall only be due if the enterprises can later show that the goods were subsequently introduced to the Philippine customs territory.

Since the tax exemptions enjoyed by FEZ enterprises under the law extend even to VAT and excise tax, as we discussed above, it follows and we accordingly rule that *the taxes imposed by Section 3 of RR 2-2012 directly contravene these exemptions.* ***First***, the regulation erroneously considers petroleum and petroleum products brought into a FEZ as taxable importations. ***Second***, it unreasonably burdens FEZ enterprises by making them pay the corresponding taxes — an obligation from which

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regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entitles, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

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the law specifically exempts them — even if there is a subsequent opportunity to refund the payments made.

Petroleum and petroleum products brought into the FEZ and ***which remain therein*** *are not taxable importations.*

RR 2-2012 clearly imposes VAT and excise tax on the importation of petroleum and petroleum products into FEZs. S*trictly speaking, however, articles brought into these FEZs are not taxable importations under the law* based on the following considerations:

First, importation refers to bringing goods from abroad *into the Philippine customs jurisdiction*. It begins from the time the goods enter the Philippine jurisdiction and is deemed terminated when the applicable taxes and duties have been paid or the goods *have left the jurisdiction of the BOC*.[68]

Second, under the Tax Code, *imported goods* are subject to VAT and excise tax. These taxes shall be paid prior to the release of the goods from *customs custody*.[69] Also, for VAT purposes,[70] an *importer* refers to any person who brings goods *into the Philippines*.

Third, the Philippine VAT system adheres to the *cross border doctrine*.[71] Under this rule, no VAT shall be imposed to form part of the cost of the goods destined for consumption *outside the Philippine customs territory*.[72] Thus, we have already ruled before that an FEZ enterprise cannot be *directly* charged for

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[68] *General Travel Service, Ltd. v. David*, G.R. No. L-19259, 18 SCRA 59, September 23, 1966, 18 SCRA 59.

[69] Section 4.107-1 (b), RR 16-2005, otherwise known as the Consolidated VAT Regulations of 2004, promulgated to Title IV of the Tax Code, as well as other provisions pertaining to VAT.

[70] Section 4.107-1(a), RR 16-2005, *id*.

[71] *Supra* note 32.

[72] *Id*.

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the VAT on its sales, nor can VAT be passed on to them *indirectly* as added cost to their purchases.[73]

Fourth, laws such as RA 7227, RA 7916, and RA 9400 have established certain special areas as *separate customs territories*.[74] In this regard, we have already held that such jurisdictions, such as the Clark FEZ, are, by legal fiction, *foreign territories*.[75]

Fifth, the Implementing Rules provides that goods *initially introduced* into the FEZs and *subsequently brought out* therefrom and introduced into the Philippine customs territory shall be considered as *importations* and thereby subject to the VAT.[76] One such instance is the sale by any FEZ enterprise to a customer located in the customs territory, which the VAT regulations refer to as a *technical importation*.[77]

We find it clear from all these that when goods (*e.g.*, petroleum and petroleum products) are brought into an FEZ, *the goods remain to be in foreign territory* and are not therefore goods introduced into Philippine customs territory subject to Philippine customs and tax laws.[78]

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[73] *Id.*

[74] RA 7227 with respect to the Subic Special Economic Zone, RA 7916 with respect to Ecozones as identified by Presidential Proclamations, and RA 9400 with respect to Clark FEZ and Poro Point Freeport Zone.

[75] *Supra* note 32.

[76] Section 7 of the Implementing Rules of RA 9400 provides: "*Tax Treatment of Goods Introduced Into and Brought Out of the Ecozones and Freeport Zones*—A. A. Raw materials, capital goods, and consumer items of domestic origin which are brought out of the Ecozone or Freeport Zone introduced into the customs territory shall be considered as importations into the customs territory and the buyer of the goods shall be treated as importer thereof, hence subject to the VAT on importation. In all instances, raw materials, capital goods, equipment and consumer items and foreign articles introduced into the customs territory, unless authorized under applicable laws, rules and regulations shall be subject to taxes and duties under the National Internal Revenue Code of 1997, as amended, and by the Tariff and Customs Code of the Philippines, as amended."

[77] *Supra* note 69.

[78] *Supra* note 57.

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Stated differently, goods brought into and traded within an FEZ are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to FEZs exempting the *importation itself* from taxes and duties.

Therefore, the act of bringing the goods into an FEZ is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the FEZ) in the FEZ or re-exported to another foreign jurisdiction, they shall continue to be tax-free.[79] However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an *importation* subject to all applicable national internal revenue taxes and customs duties.

The tax exemption granted to FEZ enterprises is an immunity from tax liability ***and*** *from the payment of the tax.*

The respondents claim that when RR 2-2012 was issued, petroleum and petroleum products brought into the FEZ by FEZ enterprises suddenly became subject to VAT and excise tax, in direct contravention of RA 9400 (with respect to Clark FEZ enterprises). Such imposition is not authorized under any law, including the Tax Code.[80]

On the other hand, the petitioners argue that RR 2-2012 does not withdraw the tax exemption privileges of FEZ enterprises. As their tax exemption is merely *qualified*, they cannot invoke outright exemption. Thus, FEZ enterprises are required to pay internal revenue taxes first on their imported petroleum under RR 2-2012. They may then refund their previous payment upon showing that the condition under RA 9400 has been satisfied — that is, the goods have not been introduced to the Philippines

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[79] *Coconut Oil Refiners Association v. Torres, supra* note 61 citing Senator Enrile from the records of the Senate containing the discussion of the concept of "special economic zone."

[80] Comment, *rollo*, p. 372.

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customs territory.[81] To the petitioners, to the extent that a refund is allowable, there is still in reality a tax exemption.[82]

We disagree with this contention.

First, FEZ enterprises bringing goods into the FEZ should not be considered as *importers* subject to tax in the same manner that the very act of bringing goods into these special territories does not make them *taxable importations*. We emphasize that the exemption from taxes and duties under RA 9400 are granted not only to *importations* into the FEZ, but also specifically to each FEZ enterprise. As discussed, the tax exemption enjoyed by *FEZ enterprises* necessarily includes the tax exemption of the *importations of selected articles* into the FEZ.

Second, the essence of a tax exemption is the *immunity* or *freedom* from a charge or burden to which others are subjected.[83] It is a *waiver* of the government's right to collect[84] the amounts that would have been collectible under our tax laws. *Thus, when the law speaks of a tax exemption, it should be understood as freedom from the imposition and payment of a particular tax.*

Based on this premise, we rule that the *refund mechanism provided by RR 2-2012 does not amount to a tax exemption*. Even if the possibility of a subsequent refund exists, the fact remains that FEZ enterprises must still spend money and other resources to pay for something they should be immune to in the first place. This completely contradicts the essence of their tax exemption.

In the same vein, we cannot agree with the view that FEZ enterprises have the duty to prove their entitlement to tax exemption first before fully enjoying the same; we find it illogical

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[81] *Rollo*, pp. 72-73.

[82] *Id*. at 76 citing *CIR v. A. D. Guerrero, supra* note 27.

[83] *Greenfield v. Meer*, 77 Phil. 394 (1946).

[84] *CIR v. Phil. Ace lines, Inc.*, G.R. Nos. L-20960-61, October 31, 1968, 25 SCRA 912, citing *CIR v. Bothelo Shipping Corporation*, G.R. No. L-21633, June 29, 1967, 20 SCRA 487.

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to determine whether a person is exempted from tax without first determining if he is subject to the tax being imposed. We have reminded the tax authorities to determine first if a person is liable for a particular tax, applying the rule of strict interpretation of tax laws, before asking him to prove his exemption therefrom.[85] Indeed, as entities exempted on taxes on importations, FEZ enterprises are clearly beyond the coverage of any law imposing those very charges. There is no justifiable reason to require them to prove that they are exempted from it.

More importantly, we have also recognized that the exemption from local and national taxes granted under RA 7227, as amended by RA 9400, are *ipso facto* accorded to FEZs. In case of doubt, conflicts with respect to such tax exemption privilege shall be resolved in favor of these special territories.[86]

RR 2-2012 is unconstitutional.

According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress.[87] In passing RR 2-2012, petitioners illegally amended the law — a power solely vested on the Legislature.

We agree with the respondents.

The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.[88]

It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the*

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[85] *CIR v. Court of Appeals*, G.R. No. 115349, April 18, 1997, 271 SCRA 605.

[86] *Supra* note 32. *Cf.* Section 6, RA 7227, as amended by RA 9400.

[87] *Rollo*, p. 379.

[88] *Commissioner of Internal Revenue v. Central Luzon Drug*, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

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collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.

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

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions.[89] To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.[90]

Finally, the State's inherent power to tax is vested exclusively in the Legislature.[91] We have since ruled that the power to tax includes the power to grant tax exemptions.[92] Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

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

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[89] *Supra* note 84.

[90] *Supra* note 61.

[91] *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015, sc.judiciary.gov.ph.

[92] *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008, 568 SCRA 496.

* Respondents changed to petitioners.

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In these lights, we hereby rule and declare that RR 2-2012 is null and void.

WHEREFORE, we hereby **DISMISS** the petition for lack of merit, and accordingly **AFFIRM** the decision of the Regional Trial Court dated November 8, 2013 in SCA Case No. 12-410.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Jardeleza, J., no part due to prior action as Solicitor General.

EN BANC

[G.R. No. 213453. November 29, 2016]

PHILIPPINE HEALTH INSURANCE CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT, MA. GRACIA PULIDO TAN, Chairperson; and JANET D. NACION, Director IV,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; DEFINED; THE GIST OF THE QUESTION OF STANDING IS WHETHER A PARTY ALLEGES SUCH A PERSONAL STAKE IN THE OUTCOME OF THE CONTROVERSY AS TO ASSURE THAT CONCRETE ADVERSENESS WHICH SHARPENS THE PRESENTATION OF ISSUES UPON WHICH THE COURT DEPENDS FOR