Republic of the Philippines
**SUPREME COURT**
Manila



**THIRD DIVISION**

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**PUREGOLD DUTY FREE, INC.,**
Respondent.

**G.R. No. 202789**

Present:

VELASCO, JR., *J.*, Chairperson,
PERALTA,
VILLARAMA, JR.,
MENDOZA,* and
REYES, *JJ.*

Promulgated:

June 22, 2015

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# DECISION

**VELASCO, JR., *J.*:**

At bar is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 9, 2012 Decision and July 18, 2012 Resolution of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 723 (CTA Case No. 7812). The CTA *en banc* upheld the November 25, 2010 and January 20, 2011 Resolutions of the CTA Second Division stating that herein respondent Puregold Duty Free, Inc. (Puregold) is entitled to, and properly availed of, the tax amnesty under Republic Act No. (RA) 9399[1] and so is no longer liable for deficiency value-added tax (VAT) and excise tax for its importation of distilled spirits, wines, and cigarettes from January 1998 to May 2004.

As culled from the records, the facts of this case are:

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* Additional member per Special Order No. 2058 dated June 10, 2015.

[1] Otherwise known as "An Act Declaring a One-Time Amnesty on Certain Tax and Duty Liabilities, Inclusive of Fees, Fines, Penalties, Interests and other additions thereto, Incurred by Certain Business Enterprises Operating Within the Special Economic Zones and Freeports Created Under Proclamation No. 163, Series of 1993; Proclamation No. 216, Series of 1993; Proclamation No. 120, Series of 1991; and Proclamation No. 984, Series of 1997, Pursuant to Section 15 of Republic Act No. 7227, as Amended, and for Other Purposes."

Puregold is engaged in the sale of various consumer goods exclusively within the Clark Special Economic Zone (CSEZ),[2] and operates its store under the authority and jurisdiction of Clark Development Corporation (CDC) and CSEZ.

As an enterprise located within CSEZ and registered with the CDC, Puregold had been issued Certificate of Tax Exemption No. 94-4,[3] later superseded by Certificate of Tax Exemption No. 98-54,[4] which enumerated the tax incentives granted to it, including tax and duty-free importation of goods. The certificates were issued pursuant to Sec. 5 of Executive Order No. (EO) 80,[5] extending to business enterprises operating within the CSEZ all the incentives granted to enterprises within the Subic Special Economic Zone (SSEZ) under RA 7227, otherwise known as the "Bases Conversion and Development Act of 1992."

Notably, Sec. 12 of RA 7227 provides duty-free importations and exemptions of businesses within the SSEZ from local and national taxes.[6] Thus, in accordance with the tax exemption certificates granted to respondent Puregold, it filed its Annual Income Tax Returns and paid the five percent (5%) preferential tax, in lieu of all other national and local taxes for the period of January 1998 to May 2004.[7]

On July 25, 2005, in *Coconut Oil Refiners v. Torres*,[8] however, this Court annulled the adverted Sec. 5 of EO 80, in effect withdrawing the

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[2] Specifically at C.M. Recto Hi-Way, P. Kalaw St., Clarkfield, Pampanga.

[3] *Rollo*, p. 203.

[4] Id. at 204.

[5] SECTION 5. *Investment Climate in the CSEZ.* – Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.

Among others, **the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227** and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted. (emphasis supplied)

[6] SECTION 12. Subic Special Economic Zone. — x x x

The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as **provide incentives such as tax and duty-free importations of raw materials, capital and equipment**. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Customs and Tariff Code and other relevant tax laws of the Philippines;

**The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone**. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to be base areas. x x x (emphasis supplied)

[7] *Rollo*, pp. 205-240. *See* Judicial Affidavit of Marissa I. Delos Reyes (Dated 26 February 2009), id. at 266-267.

[8] G.R. No. 132527, July 29, 2005, 465 SCRA 47.

preferential tax treatment heretofore enjoyed by all businesses located in the CSEZ.

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

Pending the resolution of Puregold's protest, Congress enacted RA 9399,[9] specifically to grant a tax amnesty to business enterprises affected by this Court's rulings in *John Hay People's Coalition v. Lim*[10] and *Coconut Oil Refiners*. Under RA 9399, availment of the tax amnesty relieves the qualified taxpayers of any civil, criminal and/or administrative liabilities arising from, or incident to, nonpayment of taxes, duties and other charges, viz:

> SECTION 1. *Grant of Tax Amnesty*. - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone [CSEZ] created under Proclamation No. 163, series of 1993 x x x **may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay People's Coalition v. Lim, et. al., G. R. No. 119775 dated 24 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G. R. No. 132527 dated 29 July 2005**, by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five Thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, that **the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.** (emphasis added)

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[9] Signed into law by then President Gloria Macapagal-Arroyo on March 20, 2007.
[10] G.R. No. 119775, October 24, 2003, 414 SCRA 356.

> Sec. 2. Immunities and Privileges. — Those who have availed themselves of the tax amnesty and have fully complied with all its conditions shall be relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty granted under Section 1 herein.[11]

On July 27, 2007, Puregold availed itself of the tax amnesty under RA 9399, filing for the purpose the necessary requirements and paying the amnesty tax.[12]

Nonetheless, on October 26, 2007, Puregold received a formal letter of demand from the BIR for the payment of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (₱2,780,610,174.51), supposedly representing deficiency VAT and excise taxes on its importations of alcohol and tobacco products from January 1998 to May 2004.

In its response-letter, Puregold, thru counsel, requested the cancellation of the assessment on the ground that it has already availed of the tax amnesty under RA 9399. This notwithstanding, the BIR issued on June 23, 2008 a Final Decision on Disputed Assessment stating that the availment of the tax amnesty under RA 9399 did not relieve Puregold of its liability for deficiency VAT, excise taxes, and inspection fees under Sec. 131(A) of the 1997 National Internal Revenue Code (1997 NIRC).

On July 22, 2008, Puregold filed a Petition for Review with the CTA questioning the timeliness of the assessment and arguing that the doctrines of operative fact and non-retroactivity of rulings bar the Commissioner of Internal Revenue (CIR) from assessing it of deficiency VAT and excise taxes. More importantly, Puregold asserted that, by virtue of its availment of the tax amnesty granted by RA 9399, it has been relieved of any civil, criminal and/or administrative liabilities arising from or incident to non-payment of taxes, duties and other charges.

Answering, the CIR argued that pursuant to Sec. 131(A) of the 1997 NIRC, only importations of distilled spirits, wines, and cigarettes to the freeports in Subic, Cagayan, and Zamboanga, as well as importations by government-owned duty free shops, are exempt from the payment of VAT and excise taxes.

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[11] Department Order No. (DO) 33-07 was thereafter issued by the Department of Finance (DOF) on September 11, 2007 to prescribe the implementing rules and regulations for RA 9399.

[12] *Rollo*, pp. 556-557, Annexes "8" and "9" of Puregold's Comment.

Following an exchange of motions, the CTA 2nd Division issued on November 25, 2010 a Resolution ordering the cancellation of the protested assessment against Puregold in view of its availment of tax amnesty under RA 9399, viz:

> In substantiating its compliance with Section 1 of Republic Act No. 9399, petitioner submitted Certificates of Registration/Tax Exemption[2] issued by the Clark Development Corporation, its Amnesty Tax Payment Form[3] and its BIR Tax Payment Deposit Slip[4].
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> Based on the foregoing, the Court finds that petitioner has sufficiently established its compliance with the requirements provided under R.A. No. 9399.
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> As to whether or not petitioner's tax liabilities are excluded under R.A. 9399; it is significant to note that what petitioner seeks to cancel in its petition for review and *Motion for Early Resolution*, is respondent's (CIR) assessment of deficiency excise tax and Value Added Tax (VAT) on **imported** alcohol and tobacco products.
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> Clearly, these are not taxes on articles, raw materials, capital goods, equipment and consumer items **removed** from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. This may be verified in respondent's Formal Letter of Demand where it was stated that the assessment was made against petitioner's importation of wines, liquors and tobacco products. In view thereof, the deficiency tax assessments made against petitioner, which were sought to be cancelled in the instant petition, are not excluded under R.A. No. 9399.
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> As to respondent's contention that petitioner is not entitled to avail of the tax amnesty provided under R.A. No. 9399 on the basis of Section 131 of the NIRC of 1997l, this Court is not persuaded.
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> The coverage of the tax amnesty is the difference of all national and local taxes that petitioner is liable under the Local Government Code, the Tax Code and other pertinent laws, and the 5% tax that petitioner had previously been liable pursuant to Executive Order (EO) No. 80.
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> Being liable to VAT and excise taxes on importations of alcohol and cigars under Section 131 of the 1997 Tax Code is not a condition to be excluded from the tax amnesty. Contrarily, being liable to such taxes is obviously contemplated by RA No. 9399 thru the phrase "**all national and local tax impositions under relevant tax laws, rules and regulations.**" If petitioner is liable to VAT and excise taxes pursuant to the provision of Section 131 (A) of the 1997 Tax Code, then such amount of taxes will be used in determining the **difference** mandated by R.A. 9399, which in turn, is the subject of the latter law. (emphasis added)

On December 15, 2010, the CIR moved for reconsideration reiterating her previous argument that the national and local impositions mentioned in RA 9399 do not cover the deficiency taxes being assessed against Puregold.

By Resolution of January 20, 2011, the CTA 2nd Division denied CIR's Motion for Reconsideration, holding:

> After a close scrutiny of the arguments raised by respondent (CIR), this Court finds that the same contentions were already raised in her "*Comment (Re: Petitioner's Manifestation of Compliance)*" filed on November 15, 2010 and which have already been sufficiently addressed in the assailed Resolution dated November 25, 2010.
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> To reiterate, the liability for VAT and excise taxes on importations of alcohol and cigars under Section 131 of the NIRC of 1997, as amended, is contemplated under R.A. 9399 when it provides that "*registered business enterprises operation prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993, x x x may avail themselves of the benefits of remedial tax amnesty herein granted on* ***all applicable tax and duty liabilities, inclusive of fines, penalties, interest and other additions thereto,*** *incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of* ***John Hay Peoples Coalition vs. Lim, et al., G.R. No. 119775 dated 23 October 2003 and Coconut Oil Refiners Association, Inc. vs. Torres, et al. G.R. No. 132527 dated 29 July 2005.***
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> Petitioner (Puregold) incurred liability for the assessed deficiency VAT, excise taxes and inspection fees when its tax incentives was in effect removed by the Supreme Court when it ruled in the case of *Coconut Oil Refiners Association, Inc. vs. Torres*, that the incentives provided under R.A. No. 7227 extends only to business enterprises registered within the Subic Special Economic Zone (SSEZ). Since, petitioner's tax liabilities accrued because of the said ruling, it is clear that petitioner's tax liabilities fall within the coverage of R.A. No. 9399.

On February 25, 2011, the CIR filed a Petition for Review with the CTA *en banc* assailing the adverted Resolutions of the CTA 2nd Division, predicating her recourse on the same arguments earlier presented. On May 9, 2012, the CTA *en banc* promulgated its Decision denying the CIR's petition, as follows:

> After a careful review of the records and arguments raised by the petitioner, we agree with respondent's (Puregold) contention that the same are merely a rehash of previous arguments already passed upon and discussed by the Court.
>
> Petitioner's arguments rely on (1) the applicability of Section 131(A) of the National Internal Revenue Code of 1997 (Tax Code); and, (2) that the subject deficiency taxes are not covered by the tax amnesty under R.A. No. 9399. These contentions have been discussed and resolved by the CTA Second Division and there are no compelling reasons to deviate from the said rulings. x x x

The CIR's motion for reconsideration was likewise denied by the CTA *en banc* in its Resolution dated July 18, 2012 on the ground that the same is a mere rehash of previous arguments already considered and denied.

Unmoved by the CTA's repeated denial of its contention, the CIR filed with this Court the present petition raising the following errors allegedly committed by the tax court, viz:

I

THE HONORABLE CTA *EN BANC* GRAVELY ERRED IN LIMITING THE REQUIREMENTS UNDER REPUBLIC ACT NO. 9399 FOR THE AVAILMENT OF TAX AMNESTY OF (i) FILING OF NOTICE AND RETURN FOR TAX AMNESTY WITHIN SIX (6) MONTHS FROM EFFECTIVITY OF THE LAW AND (ii) PAYMENT OF THE TAX AMNESTY TAX OF PHP 25,000.00, AND TOTALLY AND DELIBERATELY DISREGARDING THE MATERIAL AND SUBSTANTIAL FACT THAT PUREGOLD'S PLACE OF BUSINESS IS IN METRO MANILA AND NOT CLARK FIELD, PAMPANGA, AS STATED IN ITS ARTICLES OF INCORPORATION; THUS, PUREGOLD IS NOT ENTITLED TO THE BENEFITS UNDER RA 9399.

II

ASSUMING WITHOUT ADMITTING THAT RESPONDENT IS A DULY CSEZ REGISTERED ENTERPRISE WITH PRINCIPAL PLACE OF BUSINESS IN CLARK FIELD, PAMPANGA, STILL THE CTA EN BANC GRAVELY AND SERIOUSLY ERRED, AS ITS RULING IS CONTRARY TO THE INTENT OF RA 9399 WHICH EXCLUDES DEFICIENCY TAX; THUS, PUREGOLD REMAINS TO BE LIABLE FOR EXCISE TAXES ON ITS WINE, LIQUOR, AND TOBACCO IMPORTATIONS.

We find the petition bereft of merit.

**The allegation of the CIR regarding the principal place of business of Puregold cannot be considered on appeal; Puregold is entitled to avail of the tax amnesty under RA 9399**

In her petition, the CIR has introduced an entirely new matter, i.e., based on its Articles of Incorporation, Puregold's principal place of business is in Metro Manila for which reason it cannot avail itself of the benefits extended by RA 9399.

It is well settled that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal[13] and are barred by estoppel.[14] To allow the contrary would constitute a violation of the other party's right to due process, and is contrary

[13] *People v. Echegaray*, G.R. No. 117472, February 7, 1997, 267 SCRA 682.

[14] *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584; *Villaranda v. Villaranda*, 467 Phil. 1089, 1098 (2004).

to the principle of fair play. In *Ayala Land Incorporation v. Castillo*,[15] this Court held that:

> It is well established that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel. Points of law, theories, issues, and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. To consider the alleged facts and arguments belatedly raised would amount to trampling on the basic principles of fair play, justice, and due process.

During the proceedings in the CTA, the CIR never challenged Puregold's eligibility to avail of the tax amnesty under RA 9399 on the ground that its principal place of business, per its Articles of Incorporation, is in Metro Manila and not in Clark Field, Pampanga. Neither did the CIR present the supposed Articles of Incorporation nor formally offer the same in evidence for the purpose of proving that Puregold was not entitled to the tax amnesty under RA 9399. Hence, this Court cannot take cognizance, much less consider, this argument as a ground to divest Puregold of its right to avail of the benefits of RA 9399.

In any event, assuming *arguendo* that petitioner's new allegation can be raised on appeal, the same deserves short shrift. RA 9399, as couched, does not prescribe that the amnesty-seeking taxpayer has its principal office inside the CSEZ. It merely requires that such taxpayer be **registered** and **operating** within the said zone, stating that "**registered business enterprises operating** x x x within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone x x x may avail themselves of the benefits of remedial tax amnesty herein granted."

The following documents sufficiently prove that Puregold is ***registered*** as a locator by the CDC to operate business within the CSEZ, among others: (1) Exhibit "B" – Certificate of Registration, Certificate No. 94-16, issued by the CDC, CSEZ in favor of Puregold; (2) Exhibit "C" – Certificate of Registration, Certificate No. 98-54, issued by CDC, CSEZ in favor of Puregold; (3) Certificate of Tax Exemption, Certificate No. 94-16, issued by CDC, CSEZ in favor of Puregold; and (4) Certificate of Tax Exemption, Certificate No. 98-54, issued by CDC, CSEZ in favor of Puregold.

The following evidence also satisfactorily show that Puregold has been selling its goods exclusively within the CSEZ: (1) Exhibit "T" – Puregold's BIR Certificate of Registration; (2) Exhibits "U", "U-1" to "U-

[15] G.R. No. 178110, June 15, 2011, 652 SCRA 143.

16" – Several BIR Permits issued to Puregold for use of cash registers; and (3) Exhibit "W" – BIR Certification that Puregold has no branch.[16]

Clearly, the location of Puregold's principal office is not, standing alone, an argument against its availment of the tax amnesty under RA 9399 because there is no question that its actual ***operations*** were within the jurisdiction of the CSEZ.

**RA 9399 grants amnesty from liability to pay VAT and excise tax under Section 131 of the 1997 NIRC**

Anent the second error raised by petitioner, it is worth noting that the CTA has ruled that the amnesty provision of RA 9399 covers the deficiency taxes assessed on Puregold and rejected the arguments raised on the matter by the CIR. It cannot be emphasized enough that the findings of the CTA merit utmost respect, considering that its function is by nature dedicated exclusively to the consideration of tax problems. The Court said as much in *Toshiba v. Commissioner of Internal Revenue*:[17]

> Jurisprudence has consistently shown that this Court accords the findings of fact by the CTA with the highest respect. In *Sea-Land Service Inc. v. Court of Appeals,* [G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446], this Court recognizes that the Court of Tax Appeals, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority. Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

The issue on the coverage and applicability of RA 9399 to Puregold has already been addressed and disposed of by the CTA when it pointed out that RA 9399 covers *all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto.* Consequently, the government, through the enactment of RA 9399, has expressed its intention to waive its right to collect taxes, which in this case is the tax imposed under Sec. 131(A) of the 1997 NIRC, subject to the condition that Puregold has complied with the requirements provided therein.

The petitioner, however, would have this Court rule that Puregold's liability to pay the assessed deficiency taxes remains since these were not

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[16] *Rollo*, p. 509. *See* Puregold's Formal Offer of Evidence before the CTA First Division, id. at 185-186.

[17] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

incurred by respondent due to this Court's decisions in *John Hay* and *Coconut Oil*, but are clearly imposable taxes and duties on Puregold's importation of alcohol and tobacco products under the 1997 NIRC. As adopted by the dissent, it is the CIR's position that even without the aforesaid rulings, respondent as a non-chartered SEZ remains liable for the payment of VAT and excise taxes on its importation of alcohol and tobacco products from January 1998 to May 2004.

We cannot sanction the CIR's position as it would amount to nothing less than an emasculation of an otherwise clear and valid law – RA 9399. Clearly, if the Court would uphold the CIR's argument that even before the rulings in *John Hay* and *Coconut Oil*, respondent's duty-free privileges were already withdrawn by the 1997 NIRC, this Court would in effect be negating the remedial measure contemplated in RA 9399 against these rulings.

It is worthy to note that Sec. 1 of **RA 9399 explicitly and unequivocally mentions businesses within the CSEZ** as among the beneficiaries of the tax amnesty provided by RA 9399, viz:

> SECTION 1. *Grant of Tax Amnesty.* - **Registered business enterprises operating prior to the effectivity of this Act within** the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as **the Clark Special Economic Zone created under Proclamation No. 163,** series of 1993 x x x may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay People's Coalition v. Lim, et. al., G. R. No. 119775 dated 24 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G. R. No. 132527 dated 29 July 2005 x x x.

Hence, to conclude that respondent Puregold – a registered business enterprise operating within the CSEZ – cannot avail of the amnesty extended by the law with regard to its liability under Section 131(A) of the 1997 NIRC simply goes against the plain and unambiguous language of RA 9399.

Furthermore, to review the factual milieu, **Puregold enjoyed duty-free importations and exemptions from local and national taxes under EO 80**, a privilege which extended to business enterprises operating within the CSEZ all the incentives granted to enterprises within SSEZ by RA 7227. Hence, **Puregold was repeatedly issued tax exemption certificates** and **the BIR itself did not assess any deficiency taxes from the time the 1997 NIRC took effect in January 1998**.

Had the BIR believed that these tax incentives were already withdrawn, it would have immediately assessed the required tax deficiency

assessments against Puregold after the promulgation of the 1997 NIRC. Yet, **the BIR itself**, one year after the 1997 NIRC took effect, **confirmed through BIR Ruling No. 149-99 signed by then CIR Beethoven L. Rualo that the tax incentives extended to CSEZ operators by EO 80 were not affected by the 1997 NIRC**:

> While **E.O. 80** and R.A. No. 7227, as implemented by Revenue Regulations No. 1-95, and as further implemented by 12-97, were approved and made effective prior to January 1, 1998, the date of effectivity of R.A. No. 8424, otherwise known as the Tax Code of 1997, the same are **not covered by the above cited repealing provision of the said Code**. Since it is settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and applications, unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law. It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing prior special statute, will ordinarily not affect the special provisions of such earlier statute. (Steamboat Company vs. Collector, 18 Wall (US)., 478; Cass County vs. Gillet, 100 US 585; Minnesota vs. Hitchcock, 185 US 373, 396)
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> Such being the case, ***the special income tax regime or tax incentives granted to enterprises registered within the secured area of Subic and Clark Special Economic Zones have not been repealed by R.A. 8424***. (emphasis supplied)

As respondent Puregold correctly points out, BIR Ruling 149-99 has not been reversed or overruled either by the CIR or the Courts. In fact, the tax incentives enjoyed by businesses within CSEZ as provided for in EO 80 were even upheld by the BIR through a succeeding ruling.[18]

Without a doubt, the effectivity of Sec. 5, EO 80 and the privileges enjoyed by Puregold and similarly situated enterprises were not put into question until this Court categorically voided that provision in *Coconut Oil* on July 29, 2005.

In other words, **without Our ruling in *Coconut Oil*, Puregold would have had continued to enjoy tax-free importation of alcohol and tobacco products into the CSEZ.** It cannot, therefore, be gainsaid that **the subject deficiency taxes first assessed by the BIR in November 2005**, just months after the promulgation of *Coconut Oil*,[19] **accrued because of such ruling**. Hence, with more reason, these deficiency taxes are encompassed by the remedial measure that is RA 9399.

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[18] BIR VAT Ruling No. 014-04, issued on 18 May 2004, granting VAT exemption to an operator of a duty free store in Clark Special Economic Zone.

[19] Supra note 8.

A holding to the contrary, as proposed by the dissent, will only perpetuate the nauseating, revolting, and circuitous exercise of governmental departments limiting, offsetting, and ultimately cancelling each other's official acts and enactments. Consider: in *Coconut Oil*, this Court annulled Sec. 5 of EO 80; then, Congress enacted RA 9399 to offset the full effect of such annulment by granting an amnesty; and, now, the petition would have this Court nullify the amnesty in RA 9399 by withdrawing the protection extended by the law to CSEZ operators from its liabilities for the period prior to the promulgation of *John Hay* and *Coconut Oil*.

It need not be emphasized that stability and predictability are the key pillars on which our legal system must be founded and run to guarantee a business environment conducive to the country's sustainable economic growth. Hence, this Court is duty-bound to protect the basic expectations taken into account by businesses under relevant laws, such as RA 9399.

For this reason, this Court subscribes to the doctrine of operative fact, which recognizes that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration.[20] The seminal case of *Serrano de Agbayani v. Philippine National Bank*[21] discusses the application of the doctrine, thus:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
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> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that **prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions**. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. **It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with.** This is merely to reflect awareness that

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[20] *Republic v. Court of Appeals*, G.R. No. 79732, November 8, 1993, 227 SCRA 509; cited in *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013.

[21] 148 Phil. 443, 447-448 (1971); cited in *Commissioner of Internal Revenue v. San Roque Power Corporation*, supra.

> precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. **It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**
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> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*[22]

In fact, as pointed out in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[23] the doctrine of operative fact is incorporated in Section 246 of the 1997 NIRC, which provides:

> SEC. 246. Non-Retroactivity of Rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith.
>
> Thus, under Section 246 of the 1997 NIRC, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. **The reversal is not given retroactive effect**.[24]

Without a doubt, Our ruling in *Coconut Oil* cannot be retroactively applied to obliterate the effect of Section 5 of EO 80 and the various rulings of the former CIR prior to the promulgation of our Decision in 2005.

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[22] Emphasis and underscoring supplied. Citations omitted.
[23] Supra.
[24] Emphasis supplied.

Furthermore, a tax amnesty, by nature, is designed to be a general grant of clemency and the only exceptions are those specifically mentioned. In *Philippine Banking Corporation v. Commissioner of Internal Revenue*,[25] this Court held that:

> A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.

We cannot now deflect from the foregoing decision by reading into a law granting tax amnesty a qualification that is simply not there. To reiterate for emphasis, Sec. 1 of RA 9399 reads:

> SECTION 1. *Grant of Tax Amnesty.* - Registered business enterprises operating prior to the effectivity of this Act within the special economic zones and freeports created pursuant to Section 15 of Republic Act No. 7227, as amended, such as the Clark Special Economic Zone created under Proclamation No. 163, series of 1993 x x x **may avail themselves of the benefits of remedial tax amnesty herein granted on all applicable tax and duty liabilities, inclusive of fines, penalties, interests and other additions thereto, incurred by them or that might have accrued to them due to the rulings of the Supreme Court in the cases of John Hay People's Coalition v. Lim, et. al., G. R. No. 119775 dated 24 October 2003 and Coconut Oil Refiners Association, Inc. v. Torres, et. al., G. R. No. 132527 dated 29 July 2005,** by filing a notice and return in such form as shall be prescribed by the Commissioner of Internal Revenue and the Commissioner of Customs and thereafter, by paying an amnesty tax of Twenty-five Thousand pesos (P25,000.00) within six months from the effectivity of this Act: Provided, That the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local tax impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered: Provided, however, that **the coverage of the tax amnesty herein granted shall not include the applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from the special economic zone and freeport and entered in the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties prescribed in the National Internal Revenue Code (NIRC) of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.**

It is significant to note that there is nothing in Sec. 1 of RA 9399 that excludes Sec. 131(A) of the 1997 NIRC from the amnesty. In fact, there is no mention at all of any tax or duty imposed by the 1997 NIRC as being specifically excluded from the coverage of the tax amnesty.

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[25] G.R. No. 170574, January 30, 2009, 577 SCRA 366.

Article 7 of the Department of Finance's Order (DO) 33-07, which operated to implement RA 9399, also has clear exclusions and echoes RA 9399. It provides:

> Article 7. Exclusions – The one-time remedial amnesty under RA 9399 shall not include applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer **items removed from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale**, which shall be subject to the usual taxes and duties, as prescribed in the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended.

Clearly, the only exclusions that RA 9399 and its implementing rules mention are those taxes on goods that are taken out of the special economic zone. Yet, the petitioner herself admits that the assessment against Puregold does not involve such goods, but only those that were imported by Puregold into the CSEZ.[26]

If Congress intended Sec. 131 of the 1997 NIRC to be an exception to the general grant of amnesty given under RA 9399, it could have easily so provided in either the law itself, or even the implementing rules. In implementing tax amnesty laws, the CIR cannot now insert an exception where there is none under the law. And this Court cannot sanction such action.

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.[27] Hence, not being excepted, the taxes imposed under Sec. 131(A) of the 1997 NIRC must be regarded as coming within the purview of the general amnesty granted by RA 9399, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.[28]

*Commissioner of Internal Revenue v. ROH Auto Products Philippines*[29] is instructive in this regard. In that case, the President issued EO 41 on August 21, 1986, declaring a one-time tax amnesty for the unpaid income taxes for the years 1981 to 1985. The BIR, arguing that the taxpayer was not covered, contended that the taxpayer received the tax assessments in question on August 13, 1986, or before the promulgation of the EO. Resolving the issue, this Court held that **the EO granting the tax amnesty**

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[26] *Rollo*, p. 23.

[27] *PAGCOR v. BIR*, G.R. No. 172087, March 15, 2011; *Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI), represented by Ramon M. Calo v. Nasipit Employees Labor Union (NELU)-ALU-TUCP, represented by Donell P. Dagani*, G.R. No. 162411, June 30, 2008.

[28] *C.N. Hodges v. Municipal Board, Iloilo City, et al.*, 125 Phil. 442, 449 (1967); Ruben E. Agpalo, STATUTORY CONSTRUCTION 222-223 (5th ed., 2003).

[29] G.R. No. 108358, January 20, 1995, 240 SCRA 368.

**was quite clear in enumerating the exceptions. If assessments** issued before August 21, 1986 **are not listed as among the exclusions under the EO, then the BIR cannot insert it as such.** We held, thus:

> The real and only issue is whether or not the position taken by the Commissioner coincides with the meaning and intent of executive Order No. 41.
>
> We agree with both the Court of Appeals and Court of Tax Appeals that Executive Order No. 41 is quite explicit and requires hardly anything beyond a simple application of its provisions. It reads:
>
> x x x x
>
> If, as the Commissioner argues, Executive Order No. 41 had not been intended to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. The conclusion is unavoidable, and it is that the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the cases *specifically* excepted by it.

A final note. It has been declared that "the power to tax is not the power to destroy while this Court sits."[30] This Court cannot now shirk from such responsibility. It must at all times protect the right of the people to exist and subsist despite taxes.

**WHEREFORE**, the instant petition is **DENIED** and the May 9, 2012 Decision and July 18, 2012 Resolution of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 723 (CTA Case No. 7812) are hereby **AFFIRMED**.

Accordingly, the assessment against respondent Puregold Duty Free, Inc. in the amount of Two Billion Seven Hundred Eighty Million Six Hundred Ten Thousand One Hundred Seventy-Four Pesos and Fifty-One Centavos (₱2,780,610,174.51), supposedly representing deficiency value-added tax (VAT) and excise taxes on its importations of alcohol and tobacco products from January 1998 to May 2004, is hereby **CANCELLED** and **SET ASIDE**.

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[30] *Reyes v. Almanzor*, Nos. L-49839-46, April 26, 1991, 196 SCRA 322.

**SO ORDERED.**

**PRESBITERO J. VELASCO, JR.**
Associate Justice

WE CONCUR:

**DIOSDADO M. PERALTA**
Associate Justice

Pls see dissenting opinion

**MARTIN S. VILLARAMA, JR.**
Associate Justice

I join the dissent of J. Villarama

**JOSE CATRAL MENDOZA**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice

CERTIFIED TRUE COPY
**WILFREDO V. LAPITAN**
Division Clerk of Court
Third Division
SEP 02 2015