

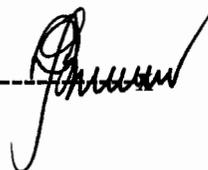
FIRST DIVISION

G.R. No. 219927 – BOARD OF INVESTMENTS, *petitioner*, v. SR METALS, INC., *respondent*.

Promulgated:

OCT 03 2018

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DISSENTING OPINION

LEONEN, J.:

Administrative agencies are the recognized experts in their fields and can resolve problems in their respective fields with competence and precision. This Court has, thus, accorded respect and even finality to the factual findings of administrative bodies, as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.

The Board of Investments was created¹ pursuant to Republic Act No. 5186 or the Investment Incentives Act. It is tasked to carry out the state policy of encouraging Filipino and foreign investments in the fields of agriculture, mining, and manufacturing to increase national income and exports, and to promote greater economic stability.² It is also the government body with the primary responsibility of implementing the provisions of Executive Order No. 226 or the Omnibus Investments Code of 1987.

The *ponencia* reversed the Board of Investments' withdrawal of SR Metals, Inc.'s (SR Metals) Income Tax Holiday incentive, as the withdrawal was purportedly not supported by substantial evidence since SR Metals complied with the requirements for the fiscal incentive.

Respectfully, I disagree.

On April 3, 2008, SR Metals filed an application as "new producer" of beneficiated nickel ore on a non-pioneer status before the Board of Investments.³ It submitted the following documents in support of its application:

¹ Rep. Act No. 5186, sec. 13.

² Rep. Act No. 5186, sec. 2.

³ *Rollo*, p. 1197.



- a) Application Letter dated March 28, 2008; . . .
- b) Duly Accomplished BOI Form No. 501 (Application for Registration);
 . . .
- c) SR Metals' Project Feasibility Report . . . ; and
- d) SR Metals' letter dated April 30, 2008. . .⁴

On May 22, 2008, the Board of Investments approved SR Metals' application as a new producer pursuant to the 2007 Investments Priorities Plan, which required an existing establishment in the same line of business to set up a new facility composed of a physical structure and equipment to be considered as a new project:

X. Project Type and Status

1. New Projects

Other than the normal definition of a new project, i.e., one to be undertaken by a newly formed/incorporated enterprise, the following are deemed new projects:

a. Project to be established by an existing enterprise with existing business operation(s) entirely distinct and different from the proposed project in terms of either final product or service, production process, equipment or raw materials;

b. Project to be established by an *existing enterprise along the same line of business as any of its existing operations*, provided it meets the following:

- i) The new project will involve the establishment of another line that may be put up in a site either outside or contiguous to its existing premises or compound.

“Another Line” refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as warehouse, finishing, quality control, or laboratory.

“New Facility” refers to the space or area, physical structure and equipment provided for a particular purpose or segment of the production process/service activity.

- ii) There is new investment in fixed assets and working capital.⁵ (Emphasis supplied)

In approving SR Metals' application as new producer, the Board of Investments fully expected it to construct a beneficiated plant as it repeatedly committed to do so in its application and supporting documents:

⁴ Id. at 1207.

⁵ Board of Investment's 2007 Investments Priorities Plan.

26. A perusal of these documents would show that [SR Metals] repeatedly described that it would utilize a beneficiation process/plant for its new enterprise subject of its application for registration. The relevant portions of the above documents are herein quoted:

- a. In its letter dated April 30, 2008, reiterating its request for the [Board of Investments] to resolve that it is qualified as a “new producer” of beneficiated nickel silicate ore, and not merely an “expansion”, viz.:

“First, [SR Metals] is new in the production of beneficiated nickel silicate ore. **In its previous mining operations, [SR Metals] had not been engaged in the process of “beneficiation”** of minerals in its mining project in Tubay[,] Agusan Del Norte. As previously discussed in our application, the process of beneficiation is described as “the most efficient way in which the nickel ore mostly saprolite ores with soft and hard ores could be segregated by **using a beneficiation/ processing plant.**”

“Now therefore, [SR Metals] can be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreements] and newly adopted beneficiation process.”

- b. [SR Metals’] Project Feasibility Report described the mining method it would undertake for its project:

“3.8 Description of Mining Method

Mining and processing sequence are as follows:

- Clearing
- Stripping
- Mining
- Beneficiation
- Concentrating
- Hauling or beneficiated and concentrated products to pier stockyards
- Shipping of the ore

3.8.4 Beneficiation

This is the most efficient way in which the ore mostly saprolite ores with soft and hard ores could be segregated by **using a beneficiation/processing plant.**”

- c. SR Metals’ Project Feasibility Report further stated the use of a beneficiation plant to implement its mining method/processes:

“[T]he estimated initial volume of investment to



implement the Project is Php364,594,150.00 or US\$8,102,092.00. The Project Management will undertake mining operation and **a beneficiation plant will be constructed/installed** for the efficient segregation of soft and hard [o]res. The Company will be buying its own heavy equipment.

- d. In its Feasibility Project Report, SR Metals indicated that it will make a fixed investment of ₱43,650,000.00 for the beneficiation plant.⁶ (Emphasis in the original)

SR Metals' repeated referral to a beneficiation plant in its Project Feasibility Report belies its assertion that it never represented that it would install a beneficiation plant which would be valued at ₱43,650,000.00.⁷

More importantly though, it was the construction of a beneficiated plant and the purchase of new pieces of equipment that characterized SR Metals as a new producer because without those two (2) substantial capital investments, it would have been considered to have merely expanded its existing mining operations and would not have qualified for the fiscal incentive of a full income tax holiday.

This is evident with how the Board of Investments initially rejected SR Metals' application as a "new producer" and suggested that it file an application for an "expanding" producer instead since it was already engaged in small-scale mining. It was only upon SR Metals' request for a reconsideration and upon its commitment that it would build a beneficiation plant that the Board of Investments reconsidered its earlier decision and approved SR Metals' application as "new producer."⁸

An income tax holiday is one of the incentives for registered enterprises provided for in Executive Order No. 226:

Article 39. Incentives to Registered Enterprises. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;

- (a) Income Tax Holiday. —

(1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, *new registered firms* shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

⁶ *Rollo*, pp. 1207–1209.

⁷ *Id.* at 1278.

⁸ *Id.* at 1197–1198.

- i. the project meets the prescribed ratio of capital equipment to number of workers set by the Board;
- ii. utilization of indigenous raw materials at rates set by the Board;
- iii. the net foreign exchange savings or earnings amount to at least US\$500,000.00 annually during the first three (3) years of operation.

The preceding paragraph notwithstanding, no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.

(2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine; Provided, however, That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

(3) The provision of Article 7 (14) notwithstanding, registered firms shall not be entitled to any extension of this incentive. (Emphasis supplied)

Article 39(a)(1) clearly provides that only new registered firms or new projects may qualify for either a four (4)-year or six (6)-year income tax holiday. Article 39(a)(2) likewise provides a similar incentive to expanding firms, but only for a period of three (3) years and only in proportion to their expansion. Thus, it is understandable why SR Metals would insist on being considered as a new producer because the fiscal incentives given to an expanding producer simply pales in comparison to those available to a new producer.

Nonetheless, the decision on whether or not SR Metals should be classified as a new producer ultimately belongs with the Board of Investments pursuant to its duty to process and approve applications for registration, and to its power to impose the terms and conditions for applications for registration.⁹ The Board of Investments likewise has the principal authority to determine if a registered enterprise falls under the specific activities that may qualify for fiscal incentives under the annual Investment Priorities Plan.¹⁰ Consequently, it has the power to either cancel or suspend a registration or an incentive, for the registered enterprise's failure to maintain the required qualifications or its violation of the terms of registration.¹¹

⁹ Exec. Order No. 226, Article 7(3).

¹⁰ Exec. Order No. 226, Article 7(1).

¹¹ Exec. Order No. 226, Article 7(8).

In the case at bar, the 2007 Investment Priorities Plan provided three (3) different types of new projects: (1) a newly formed or incorporated enterprise; (2) an existing enterprise with a proposed project that is entirely different from its existing business operation; and (3) an existing enterprise which will put up another line or new facility, i.e., physical structure and equipment, and will infuse new investment into its existing business operation.

A registered enterprise will have to fall under any of the three (3) classifications for new projects to qualify for an income tax holiday; and the Board of Investments, with its mandate of implementing Executive Order No. 226, is the government body empowered to determine if a registered enterprise satisfies the established requirements.

The Board of Investments found that SR Metals failed to comply with the terms and conditions of its registration; thus, there is a need to revoke its previous entitlement to an income tax holiday:

In petitioner's evaluation, it found [SR Metals] wanting in its compliance with the terms and conditions of its registration, to wit: 1) establishment of another line (beneficiation plant); 2) infusion of new investments in fixed assets; 3) submission of a progress report; and 4) adherence to project timetable specifically on the acquisition of machinery. As a result of [SR Metals'] failure to comply with the conditions attached to its registration and the grant of [income tax holiday] incentive, [SR Metals'] entitlement to such incentive did not accrue. It follows then that petitioner can revoke/cancel [SR Metals'] [income tax holiday] entitlement. To repeat, facts warrant the complete revocation of [SR Metals'] registration, but petitioner only merited the withdrawal of [income tax holiday] incentive to [SR Metals].¹²

This Court has consistently deferred to the factual findings of administrative agencies as they are the recognized experts in their fields and they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or courts of justice."¹³ Thus, this Court has accorded respect and even finality to the factual findings of administrative bodies as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.¹⁴

Similar to the respect accorded to their factual findings, the interpretation by administrative agencies of their own rules and regulations is likewise given great respect by this Court, as evident in *Eastern*

¹² *Rollo*, p. 1219.

¹³ *Solid Homes v. Payawal*, 257 Phil. 914, 921 (1989) [Per J. Cruz, First Division].

¹⁴ *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per J. Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per J. Quisumbing, Second Division]; *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per J. Chico-Nazario, First Division].

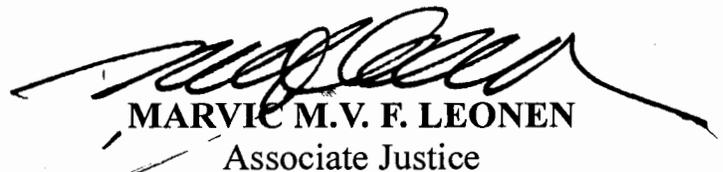
*Telecommunications Philippines, Inc. v. International Communication Corporation.*¹⁵

The NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.¹⁶ (Citations omitted)

An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment.

With its failure to put up a physical structure, i.e., the beneficiation plant, *and* pieces of equipment, SR Metals cannot be classified as a new project under the 2007 Investment Priorities Plan. Hence, it is not entitled to an income tax holiday and the Board of Investments did not err in revoking its entitlement to it.

ACCORDINGLY, I vote to **GRANT** the petition and **REVERSE** and **SET ASIDE** the Court of Appeals December 4, 2014 Decision and August 11, 2015 Resolution in CA-G.R. SP No. 131511.


MARVIC M.V. F. LEONEN
Associate Justice

¹⁵ 516 Phil. 518 (2006) [Per J. Austria-Martinez, Special Second Division].

¹⁶ *Id.* at 521.