

SECOND DIVISION

G.R. No. 227542 (*Bureau of Customs v. Japanese 4x4 Export Corporation, represented by Pietro Geroue*)

Promulgated:

MAY 12 2021



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DISSENTING OPINION

LAZARO-JAVIER, J.:

The *ponencia* affirms the trial court ruling which invalidated Customs Memorandum Order No. (CMO) 16-2005¹ as it allegedly violated Section 12 of Republic Act No. 7227 (RA 7227)² or the Bases Conversion and Development Act of 1992.

On the one hand, **CMO 16-2005** provides:

CUSTOMS MEMORANDUM ORDER
No. 16-2005

Subject: Enjoining Vessels and Other Carriers Not To Accept Right Hand Drive Motor Vehicles Pursuant to Republic Act no. 8506.

Section 1. Quoted hereunder is Section 1 of Republic Act 8506 entitled AN ACT BANNING THE REGISTRATION AND OPERATION OF VEHICLES WITH RIGHT-HAND STEERING WHEEL IN ANY PRIVATE OR PUBLIC STREET, ROAD OR HIGHWAY, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES:

*It shall be unlawful for any person to **import, cause the importation of, register, cause the registration of, use, or operate any vehicle with its steering wheel right-hand side thereof** in any highway, street or road, whether private or public or of the national or local government except such vehicles that are acknowledged as vintage automobiles, manufactured before 1960, in showroom condition, and/or are to be utilized exclusively for officially and legally sanctioned motorsports events, and off-road special purpose vehicles.*

Section 2. The same RA 8506 law imposes the penalty of *prision correccional* in its medium period and a fine of fifty thousand pesos (P50,000) shall be imposed upon any person violating the provisions thereof.

¹ Enjoining Vessels and other Carriers not to Accept Right Hand Drive Motor Vehicles Pursuant to Republic Act No. 8506.

² Rep. Act No. 7227, otherwise known as the "Bases Conversion and Development Act of 1992," approved 13 March 1992, as amended by Rep. Act No. 9400, Approved 20 March 2007.



Section 3. All shipping/air lines and other common carriers are enjoined to observe strictly the provisions of RA 8506 by not accepting Right-Hand Drive (RHD) vehicles and /or any auto parts for use with RHD vehicles as cargo destined to any Port of Entry in the Philippines, under pain of criminal prosecution for violation of RA 8506.

Section 4. In the event that RHD or RHD parts are discovered in any vessel, such items will not be unloaded, or if already unloaded same shall be placed under continuous underguarding until loaded and re-exported back to the country of origin at the expense of the carrying vessel subject further to the imposition of applicable penalties by the Bureau of Customs.

Section 5. All District/Port Collectors are hereby directed to inform all shipping/air lines calling at their Ports of this Order and to strictly enforce this Order accordingly.

Section 6. Any order, memoranda, or issuance inconsistent with this Order is hereby repealed accordingly.

Section 7. This Order takes effect immediately.

On the other hand, **Section 12 of RA 7227** states:

Section 12. Subic Special Economic Zone – x x x

(a) x x x

(b) **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 Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines:”
(Emphasis supplied)

The ponencia hinges its ruling on *Executive Secretary v. Southwing Heavy Industries*³ where the Court invalidated Executive Order No. (EO) 156⁴ for being *ultra vires* as it prohibited the importation of used motor vehicles into the Subic Bay Freeport Zone, in violation of RA 7227. Too, *Executive Secretary v. Northeast Freight Forwarders, Inc.*⁵ held that EO 156 can only apply in the customs territory of the Philippines but cannot extend to the secured and fenced-in Subic Bay Freeport Zone.

³ *Executive Secretary v. Southwing Heavy Industries, Inc.*, 518 Phil. 103 (2006).

⁴ PROVIDING FOR A COMPREHENSIVE INDUSTRIAL POLICY AND DIRECTIONS FOR THE MOTOR VEHICLE DEVELOPMENT PROGRAM AND ITS IMPLEMENTING GUIDELINES

⁵ 600 Phil. 789 (2009).

Consequently, the *ponencia* asserts that CMO 16-2005, just like EO 156, is *ultra vires* as it “alters the provisions of an existing law” by extending the importation ban of right-hand drive vehicles into the Subic Bay Freeport Zone, which is considered foreign territory.

With all due respect, *Southwing* and *Northeast* are not proper precedents here.

The distinction between CMO 16-2005 and EO 156 lies in their supporting legislation. EO 156 was not in implementation of any particular law but of the President’s general power to control the importation of commodities under the Tariff and Customs Code⁶ and approve or reject the importation of equipment or other raw materials under the Omnibus Investment Code.⁷ Meanwhile, CMO 16-2005 was issued pursuant to Republic Act No. 8506 (RA 8506) which decrees:

Republic Act No. 8506

AN ACT BANNING THE REGISTRATION AND OPERATION OF VEHICLES WITH RIGHT-HAND STEERING WHEEL IN ANY PRIVATE OR PUBLIC STREET, ROAD OR HIGHWAY, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. It shall be unlawful for any person to **import, cause the importation of, register, cause the registration of, use, or operate any vehicle with its steering wheel right-hand side thereof** in any highway, street or road, whether private or public or of the national or local government except such vehicles that are acknowledged as vintage automobiles, manufactured before 1960, in showroom condition, and/or are to be utilized exclusively for officially and legally sanctioned motorsports events, and off-road special purpose vehicles.

Section 2. The penalty of *prision correccional* in its medium period and a fine of fifty thousand pesos (P50,000) shall be imposed upon any person violating the provisions of this Act.

⁶ Sec. 401. Flexible Clause. —

a. **In the interest of national economy, general welfare and/or national security, and subject to the limitations herein prescribed, the President, upon recommendation of the National Economic and Development Authority (hereinafter referred to as NEDA), is hereby empowered: x x x (2) to establish import quota or to ban imports of any commodity, as may be necessary; x x x** Provided, That upon periodic investigations by the Tariff Commission and recommendation of the NEDA, the President may cause a gradual reduction of protection levels granted in Section One hundred and four of this Code, including those subsequently granted pursuant to this section.

⁷ ART. 7. Powers and duties of the Board.

x x x x

(12) Formulate and implement rationalization programs for certain industries whose operation may result in dislocation, overcrowding or inefficient use of resources, thus impeding economic growth. For this purpose, the Board may formulate guidelines for progressive manufacturing programs, local content programs, mandatory sourcing requirements and dispersal of industries. **In appropriate cases and upon approval of the President, the Board may restrict, either totally or partially, the importation of any equipment or raw materials or finished products involved in the rationalization program**

Section 3. This Act shall take effect immediately after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved: February 13, 1998

Verily, it was not the Bureau of Customs, nor the President, who unilaterally decided to prohibit the importation of right-hand drive vehicles but Congress itself through RA 8506. Notably, the law does not provide any exemption. Thus, when CMO 16-2005 implements the prohibition even against those imported right hand drive vehicles brought in through the Subic Bay Freeport Zone, it simply follows the letter of the law, without any distinction. Where the law does not distinguish, we should not distinguish.

CMO 16-2005 was precisely designed to implement the law enacted by Congress. Its issuance does not amount to “an intrusion upon the powers granted to the SBMA under Section 13(b)(2) of RA 7227. To emphasize, while the SBMA has a free hand “to develop the Subic Freeport Zone into a self-sustaining entity that will generate employment and attract foreign and local investment,” the exercise of this authority remains subject to the provisions of the Constitution and other laws. To rule otherwise will produce absurd, if not, disastrous consequences. For then, the SBMA shall become a super body empowered to overturn every statutory prohibition against certain importations even those pertaining to illicit items such as, but not limited to, illegal drugs and contrabands. All the importer ought to do is arrange their entry into the Subic Bay Freeport Zone, not anywhere else. This illegal, nay, immoral circumvention of the law could not have been intended by the legislature. The principle of “separate customs territory” is not meant to be, and should never be, above the law.

In any event, Section 45 of the Implementing Rules and Regulations of RA 7227, sans any distinction, prohibits the importation of certain articles, the prohibition must apply to all entry points in the country, including the entry point within the Subic Bay Freeport Zone, thus:

Sec. 45. Importation of Articles. In general, all articles may be imported by SBF Enterprises into the SBF free of customs and import duties and national internal revenue taxes, **except those articles prohibited by the SBMA and those absolutely prohibited by law.** (Emphasis supplied)

ACCORDINGLY, I vote to **GRANT** the present petition and uphold the validity of Customs Memorandum Order No. 16-2005.


AMY C. LAZARO-JAVIER
Associate Justice