REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF CALOOCAN AND HON. ANALIZA E. MENDIOLA, IN HER CAPACITY AS THE CITY TREASURER OF CALOOCAN CITY,
Petitioners,

-versus-

LIGHT RAIL MANILA CORPORATION,
Respondent.

CTA EB NO. 2446
(CTA AC No. 224)

Present:

Del Rosario, *P.J.,*
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, *and*
Ferrer-Flores, *JJ.*

Promulgated:
FEB 08 2023
4:17p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution is petitioner's "Motion for Reconsideration (of the Decision dated June 30, 2022)"[1] filed on July 18, 2022, with respondent's "Comment (Re: Motion for Reconsideration dated July 15, 2022)" filed on November 2, 2022.

In the instant motion, petitioner states the petition should be dismissed on the ground of forum shopping, that there are no persuasive reasons to grant the petition for issuance of Writ of Prohibition, that respondent is not a common carrier within the purview of Article 1732 of the Civil Code, that respondent is a management contractor of LRTA and should be treated as such

[1] Docket, CTA EB NO. 2446, pp. 421-446.

for purposes of taxation, that Section 311 of the Caloocan City Revenue Code is not prejudicial to the taxpayers.

In its Comment, respondent states that it is not guilty of forum shopping; that the Regional Trial Court of Caloocan City (RTC) cases are Petitions for Review filed under Section 195 in relation to Section 196 of the Local Government Code; that the present case originated from an appeal before the court *a quo*, under Rule 65 of the Rules of Court, praying that petitioner be enjoined from issuing further illegal assessments, direct the City to properly recognize respondent as a common carrier, direct the City to credit or refund illegally collected amounts for the fourth quarter of 2018, and declare Section 311 of the Caloocan City Revenue Code as null and void; that the Court correctly ruled that the Writ of Prohibition is the proper remedy under the circumstances since all the elements of a writ of prohibition are present in this case; that the Court correctly ruled that respondent is a common carrier and is exempt from the payment of local business tax on its rail revenue.

After consideration of the motion submitted, the Court *En Banc* resolves to deny petitioners' "Motion for Reconsideration (of the Decision dated June 30, 2022)."

A careful and closer look at the arguments raised by petitioners in the present motion reveals that the grounds relied upon and the matters raised therein are mere restatements of the previous arguments. All these matters were already considered and extensively discussed by the Court *En Banc* in the assailed Decision.

The subject matters, rights asserted and relief sought in the cases before the RTC are different from the subject matter of the Petition for Prohibition filed before the Court in Division. The subject matter of the cases before the RTC are the assessments and payments of local business taxes for the first to fourth quarters of taxable year 2017, second and third quarters of taxable year 2018, and second to fourth quarters of taxable year 2019, first to fourth quarters of 2020, 2021, and 2022 while the instant case is an appeal from the denial of a Petition for Injunction, Prohibition, Mandamus, and Declaration of Nullity. The petition was prompted by the assessment and collection of local business tax for the fourth quarter of 2018.

The assailed Decision[2] categorically stated in its findings that respondent is a common carrier and that Section 311 of the Caloocan Updated Revenue Code (CURC) is void since it required payment under protest and for shortening the period within which to file a protest. We reiterate as follows:

[2] Pages 9-17.

"Respondent is engaged in the development, construction, operation, maintenance, repair, management and other allied businesses involving railways and railroad projects and other transport systems for the private and public sector, including investing in such projects (whether as shareholder, partner or otherwise) and binding and negotiating for such projects.[3]

Respondent actually operates the LRT1. Thus, respondent definitely falls under the definition of a common carrier.

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With that said, it is beyond doubt that a vital part of the LRT1's operation involves the safe transport of passengers between all railway stations along its current route. The obligation to serve this mandate of the LRTA is, at present, the burden of petitioner while the ceding of such function in favor of the latter is within the LRTA's powers under EO 603, to wit:

...

Sec. 4. General Powers. – The Authority, through the Board of Directors, may undertake such action as are expedient for or conducive to the attainment of the purposes and objectives of the Authority, or of any purpose reasonably incidental to or consequential upon any of these purposes. As such, the Authority shall have the following general powers:

...

(5) to contract any obligation or enter into, assign or accept the assignment of, and vary or rescind any agreement, contract of obligation necessary or incidental to the proper management of the Authority;

...

(9) To carry on any business, either alone or in partnership with any other person or persons;

(10) To employ an agent or contractor or perform such things as the Authority may perform[.]

...

Granted that according to respondents,[4] the LRTA does not shed its character as a common carrier by the grant of petitioner's franchise, nothing prohibits the consideration that petitioner may be a common carrier by the sheer exercise of its functions which as previously stated, involves the transport of passengers along the LRT1's route. Neither does the fact of the national government's continuous ownership through the LRTA of the LRT1 constitute any bar to the notion that petitioner could be deemed a common carrier.

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[3] Amended Articles of Incorporation of Light Rail Manila Corporation, Exhibit "P-2," Docket, CTA AC No. 224, p. 516.

[4] Petitioners herein.

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Given the foregoing, the Court finds petitioner to have satisfied all the requirements for it to be considered a common carrier and thus, it is **exempt from the payment of local business taxes under Section 133(j) of the LGC**. This conclusion is further bolstered by its continuous filing of quarterly percentage tax returns or the so-called "common carriers tax" to the national government. The exemption of common carriers from payment of percentage tax in the LGC is rooted precisely from the fact that the national government already imposes and collects their quarterly gross receipts by virtue of Section 117 of the National Internal Revenue Code (**NIRC**) of 1997, as amended which states:

> ...
> **Sec. 117**. Percentage Tax on Domestic Carriers and Keepers of Garages. – Cars for rent or for hire driven by the lessee, transportation contractors, including persons who transport passengers for hire, and other domestic carriers by land, air or water, for the transport of passengers, except owners of bancas and owner of animal-drawn two wheeled vehicle, and keepers of garages shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts. [5]

Based on the foregoing, the Court *En Banc* finds that the Court in Division is correct when it granted the petition for issuance of a writ of prohibition in favor of respondent.

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The elements for the issuance of a writ of prohibition are as follows:

1. It must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial;

2. The tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and

3. There is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[6]

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[5] Decision, pp. 13-19, citations omitted.
[6] *Esperanza S. Longino vs. Atty. Lina A. General, OIC, Commissioner Member III; Atty. Noel A. GAlarosa, OIC, Commissioner Member III; Atty. Luz Sarmiento, OIC, Office of the Executive Director, all of COSLAP; Judge Jaime F. Bautista of the Regionasl Trial Court, Branch 75, Valenzuela City; and Elsa P. Serrano,* G.R. No. 147956, February 16, 2005.

Records show that all the elements for the issuance of a writ of prohibition are present. *First,* the action is directed against a public corporation, herein petitioner City Government of Caloocan. *Second,* petitioners acted in excess of their jurisdiction when they assessed respondent of business taxes despite its clear exemption under Section 133(j) of the LGC. *Lastly,* there is no other available remedy to respondent to bar petitioners from the continuous assessments.

As regards the validity of Section 311 of the CURC, the Court *En Banc* finds the same contrary to the provisions of the LGC.

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Section 311 of the CURC is contrary to the provisions of the LGC on two (2) grounds:

First, Section 311 of the CURC provides a requirement of "payment under protest" as a condition precedent to the exercise of a remedy under the LGC. While Section 195 of the LGC does not require payment of the assessed business tax before a taxpayer can file a protest. Section 195 merely requires that "Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory."

Second, Section 311 shortens the period and alters the reckoning point within which a taxpayer may protest an assessment. The 60-day period from receipt of the notice of assessment, within which a taxpayer may file a written protest was changed to within 30 days from the payment (payment under protest) of the tax.

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In view of the foregoing discussions, it is clear that Section 311 of the CURC should be struck down as *ultra vires* for requiring payment under protest and for shortening the period within which to file a protest."

In the case of *Shangri-La International Hotel Management Ltd., et al. vs. Developers Group of Companies, Inc.,*[7] the Supreme Court denied respondent's

[7] G.R. No. 159938, January 22, 2007.

Motion for Reconsideration for being a mere reiteration of their previous arguments, and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, thus:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

WHEREFORE, premises considered, petitioners' "Motion for Reconsideration (of the Decision dated June 30, 2022)" is **DENIED for lack of merit**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice