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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner,	**C.T.A. AC NO. 10**
- versus -	Members: **CASTAÑEDA**, *Chairperson* **UY,** and **PALANCA-ENRIQUEZ,** *JJ.*
BATANGAS CITY, BENJAMIN E. PARGAS in his capacity as CITY TREASURER and TEODULFO A. DEGUITO in his capacity as CITY LEGAL OFFICER OF BATANGAS CITY, Respondents.	Promulgated: JUN 2 1 2007

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HUNDRED FIFTY SIX THOUSAND TWO HUNDRED FIFTY THREE AND 04/100 PESOS (P312,656,253.04), respectively. It is further prayed that:

a. Batangas City be declared as legally proscribed from imposing business taxes on the manufacture and distribution of petroleum products;

b. The Regional Trial Court of Batangas City, Branch 2, under Judge Mario V. Lopez, be directed to issue a writ of execution to execute the assailed Decision, insofar as it declared the invalidity of the Mayor's Permit Fees based on the gross receipts of petitioner and ordering respondents to refund to petitioner the amount of P4,299,851.00;

c. Respondents be permanently enjoined from implementing Section 23 of the Batangas Revenue Code as against petitioner; and

d. Section 23 of the Batangas City Tax Code of 2002 be declared null and void insofar as it imposes taxes on the manufacture, refining, distribution, marketing and sale of petroleum products.

STATEMENT OF THE FACTS

The facts as culled from the records of the case are as follows:

Petitioner, Pilipinas Shell Petroleum Corporation (PSPC), operates an oil refinery and depot in Tabangao, Batangas City, which manufactures and produces petroleum products that are distributed nationwide.

On the other hand, respondent Batangas City is a local government unit (LGU) with the capacity to sue and be sued under its Charter and Section 22(a)(2) of the Local Government Code (LGC) of 1991. Respondents Teodulfo A. Deguito and Benjamin E. Pargas are the City Legal Officer and

City Treasurer, respectively, of Batangas City[1].

During the years that the PSPC was operating, particularly in 2002, it was only paying the amount of P98,964.71 for fees and other charges which include the amount of P1,180.34 as Mayor's Permit Fee. On February 20, 2002, respondent, Batangas City, through its City Legal Officer, sent a notice of assessment to petitioner demanding the payment of P92,373,720.50 and P312,656,253.04 as business taxes for its manufacture and distribution of petroleum products. In addition, PSPC was also required and assessed to pay the amount of P4,299,851.00 as Mayor's Permit Fee based on the gross sales of its Tabangao Refinery[2]. The assessment was pursuant to Section 143(h) of the Local Government Code of 1991 and Section 23 of its Batangas City Tax Code of 2002.

On the belief that respondents have no authority to impose the subject taxes and fees, petitioner filed its protest on April 17, 2002 contending among others that it is not liable for the payment of the local business tax either as manufacturer or distributor of petroleum products. It further argued that the Mayor's Permit Fees are exorbitant, confiscatory, arbitrary, unreasonable and not commensurate with the cost of issuing a license.

On May 13, 2002, respondents denied petitioner's protest and declared that under Section 14 of the Batangas City Tax Code of 2002, they are empowered to withhold the issuance of the Mayor's Permit for failure of petitioner to pay the business taxes on its manufacture and distribution of

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1 Petition for Review, Records, page 6.
2 Decision, Annex "A", Records, pages 73-74.

petroleum products.

Aggrieved by the decision of respondents, on June 17, 2002, petitioner then filed a Petition for Review[3] under Section 195 of the Local Government Code of 1991 before the Regional Trial Court (RTC) of Batangas City appealing the denial by respondents of its protest.

In its Petition for Review, petitioner maintained that respondents have no authority to impose the said taxes and fees, and argued that the levy of local business taxes on the business of manufacturing and distributing gasoline and other petroleum products is contrary to law and against declared national policy. Assuming however that respondents have the power to levy local business taxes on the business of manufacturing and distributing gasoline and other petroleum products, the computation of petitioner's tax liability is erroneous. Also, the Mayor's Permit Fees levied by respondents were challenged for being unreasonable and confiscatory.[4]

In his Answer, respondents contended that the City of Batangas can legally impose the taxes on the business of manufacturing and distribution of petroleum products, including the Mayor's Permit Fees upon petitioner.

After the preliminary conference, trial, and presentation of witnesses, both parties were directed to submit their respective Memorandum. The lower court then summarized the issues[5] raised during the course of the trial and presented in petitioner's Memorandum, thus:

a. Whether the Batangas City Tax Code of 2002 imposing

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3 Petition for Review, Annex "F", Records, pages 127-145.
4 Decision, Annex "A", Records, page 74.
5 *Supra*, pages 76-77.

business taxes in the form of distributor and manufacturer on Pilipinas Shell Petroleum Corporation contravenes the law, public policy and pertinent rules and regulations; and

b. Whether or not the business tax and mayor's permit fee imposed by the Batangas City Tax Code based on the gross receipts are excessive, oppressive and unreasonable.

The lower court deemed the issue of estoppel, raised by respondent, inapplicable and declared that petitioner merely exercised its right to the remedy provided for under Section 195 of the Local Government Code of 1991[6].

During the pendency of the case, petitioner paid under protest the Mayor's Permit Fees for the year 2003 amounting to P774,840.50 as manufacturer and P3,525,010.50 as distributor. When petitioner applied for the issuance of the Mayor's Permit in 2004, it offered the amount of P150,000.00 as compromise Mayor's Permit Fee without prejudice to the outcome of the case then pending, which was rejected by respondent.

In the assailed Decision of RTC Branch II of Batangas City, penned by Judge Mario V. Lopez, petitioner's appeal was partially granted and the said court a quo declared that:

"**WHEREFORE**, in view of the foregoing premises, this Court hereby renders judgment as follows:

1. **The taxes on the privilege of engaging in the business of manufacturing, distribution or dealing in petroleum products in the amount of P92,373,750.50 and P312,656,253.04, respectively, imposed by Batangas City on Pilipinas Shell, is VALID.**

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6 *Supra*, page 77.

2. **Declaring the Mayor's Permit Fee in the amount of P4,299,851.00 based on gross receipts/sales as grossly excessive and unreasonable considering the aforesaid business taxes.**

ACCORDINGLY, THE PETITIONER, PILIPINAS SHELL PETROLEUM CORPORATION (PSPC), IS HEREBY ORDERED TO PAY THE AMOUNT OF PHP405,030,003.54 AS TAX ON ITS BUSINESS OF ENGAGING IN THE MANUFACTURE AND DISTRIBUTION OF PETROLEUM PRODUCTS, WHILE THE ASSESSMENT OF PHP4,299,851.00 AS MAYOR'S PERMIT FEE IS HEREBY ORDERED REVOKED WITHOUT PREJUDICE TO ITS MODIFICATION BY THE RESPONDENTS, BATANGAS CITY, ET AL.

SO ORDERED."

Unsatisfied with the Decision of the lower court, petitioner filed a "Motion for Partial Reconsideration" which raised the following grounds:

1. This Honorable Court committed a reversible error in interpreting Section 133(h) of the Local Government Code to mean that excise taxes may be imposed only on articles or products and not on the privilege of performing an act, engaging in an occupation or enjoying a privilege.

2. Assuming arguendo that Batangas City is legally empowered to impose and collect business taxes from PSPC, this Honorable Court committed reversible error in ordering PSPC to pay the amounts of Php92,373,720.60 and Php312,656,253.04 and thereby effectively deprive PSPC of the right to question the correct amount of its tax liability.

3. This Honorable Court committed a reversible error in holding that PSPC may be subjected to both manufacturer's and distributor's taxes.

4. This Honorable Court committed a reversible error in holding that the principle on strict interpretation of exemption from taxation is the paramount rule applicable in this case.

5. This Honorable Court committed reversible error in declaring Article 232 (h) of the Implementing Rules and Regulations of the LGC void.

Before the issues could be resolved, petitioner filed a "Manifestation and Motion for Partial Execution" to which respondents filed a "Counter-Manifestation and Opposition to the Motion for Partial Execution of Decision". On February 2, 2005, petitioner filed another "Manifestation and Motion" praying for the refund of the Mayor's Permit Fees it paid for the taxable year 2003 in the amount of P4,299,851.00.

In the Resolution of the lower court[7], petitioner's Motions were denied for lack of merit.

Hence, this "Petition for Review with Extremely Urgent Application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction" filed on April 27, 2005.

Respondent filed its "Comment" on July 6, 2005.

Petitioner filed its "Reply (to Respondents' June 21, 2005 Comments on the Petition for Review)" on the August 3, 2005.

Considering the urgency of the resolution of petitioner's Application for the Issuance of a Writ of Preliminary Injunction, on August 11, 2005, this Court granted the said application and ordered respondents to hold in abeyance the collection of the questioned manufacturer and distributor's taxes in the amounts of P92,373,720.50 and P312,656,253.04, respectively, conditioned upon the filing by petitioner of a surety bond in the amount of P500,000,000.00 taken from a bonding company duly accredited by the Supreme Court.

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7 Annex "B", Records, pages 96-117.

On August 30, 2005, petitioner filed its "Compliance" with the Court's Resolution of August 11, 2005, submitting the required surety bond issued by Malayan Insurance Co., Inc. However, in a Resolution dated September 13, 2005, this Court resolved to disapprove petitioner's surety bond for failure of petitioner to submit a Certificate containing the specimen signatures of the agents authorized to transact business with the Court as required under the Guidelines on Corporate Surety Bonds issued by the Supreme Court[8].

A "Motion for Reconsideration" was filed by petitioner on October 7, 2005. Finding merit in petitioner's manifestations, this Court, through a Resolution dated February 20, 2006, granted the said Motion, thus, lifted and set aside the earlier Resolution of September 13, 2005.

Upon the parties' filing of their Memoranda, this case was submitted for decision on July 5, 2006[9].

THE ISSUES

1. Whether or not Respondents, in line with the existing national policy on petroleum products, may validly impose and collect from PSPC, taxes on the business of manufacturing and/or distribution of petroleum products.

2. Assuming *arguendo* that Respondents have the power to impose and collect taxes on the business of manufacturing and distribution of petroleum products, whether or not Respondents correctly assessed PSPC's tax liability in that:

2.a Respondents computed PSPC's tax liability based on the sales/receipts of PSPC consummated beyond Respondent's taxing jurisdiction.

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8 A.M. No. 04-7-02-SC.

9 Resolution, July 5, 2006, Records, page 719.

2.b Respondents imposed both manufacturers' and distributors' tax on PSPC.

3. Whether or not the Mayor's Permit Fees in the amount of Php4,299,851.00, which the RTC found to be "grossly excessive and unreasonable" may already be refunded to PSPC.

4. Whether or not the closure and/or suspension of the operations of the Tabangao Refinery of PSPC would serve the welfare of the consuming public and the interest of the greater number.

THE ARGUMENTS

In their "Comments on the Petition for Review"[10] filed on July 6, 2005, respondents raised the following arguments, to quote:

1. Petitioners (supposed to be Respondents) does (sic) not accept the statement of facts stated in the Petition;

2. The Petition should not be given due course for the following reasons:

   a. The Petition for Review did not follow basic rules of procedure.

   b. The Regional Trial Court of Batangas City, Branch II did not commit any reversible error when it ruled that:

      1. Respondents may validly impose and collect from Petitioner taxes on the business of manufacturing and distribution of petroleum products;

      2. Sections 130 and 133 (h) of the Local Government Code do not exempt Petitioner from business taxes;

      3. The Petitioner is liable to both

10 Records, pages 404-431.

manufacturer's tax and distributor's tax imposed by the Respondents;

4. The Petitioner, by reason of its plant in Barangay Ambulong, is liable for taxes on its business as manufacturer and distributor in Batangas City under Section 150 of the Local Government Code;

5. In denying the motion for partial execution of the decision for lack of merit, the reason being that the principal action is only one for declaratory relief.

c. Petitioner has no right to a temporary restraining order or a writ of preliminary injunction.

Petitioner's "Reply (to Respondents' June 21, 2005 Comments on the Petition for Review)" was filed on the August 3, 2005, interposing the following objections, to wit:

1. The imposition of and attempts by Respondents to collect the local business taxes from PSPC is violative of the law and existing national policy on the petroleum industry;

2. The LGC itself and its IRR provide for the clear and unequivocal exemption of PSPC from the disputed local taxes;

3. Respondents have not shown any legal basis or authority which sanctions a collateral attack upon Article 232(h) for the purpose of having it declared void;

4. Sections 143(a) and 143(b) of the LGC do not apply to PSPC;

5. Laws imposing taxes are strictly construed against the taxing authority;

6. It was clear error for the court a quo to have passed upon the correctness of the amounts of local business

taxes being collected by Respondents from PSPC when it was not put at issue by the parties; and

7. The Assailed Decision with respect to the issue on Mayor's Permit Fees has become final and executory and thus, PSPC is entitled to execution thereof.

On September 1, 2005, respondents filed their "Rejoinder to Petitioner's Reply dated August 2, 2005" filed through registered mail on August 22, 2005, highlighting the following points, thus:

1. Petitioner is liable for manufacturer's tax regardless of whether or not sales transactions are made in its Refinery in Batangas City;

2. Article 232(h) of the IRR cannot prevail over the provisions of Section 143(h) of the Local Government Code;

3. The tax subject of this case is a business tax, not an excise tax;

4. The issuance of a Mayor's Permit can not be compelled by the Petitioner; and

5. Rules are made to be followed, not to be broken.

At the outset, petitioner submits that Article 232(h) of the Implementing Rules and Regulations (IRR) of the LGC, which was formulated and drafted by the Oversight Committee,[11] clearly provides that local government units have no power and/or authority to impose local tax on the production, manufacture, refinery, distribution and sale of petroleum products. For expediency:

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11 Sec. 533, Local Government Code of 1991.

> "**Article 232. Tax on Business** xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax provided that on any business subject to the excise, value-added or percentage tax under the NIRC, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year, and provided further that **in line with the existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed under this provision**." (*Emphasis supplied*)

Based on petitioner's brief illustration of how Article 232(h) came into existence, the said Article was formulated and drafted to give meaning and substance to Section 133(h) of the Local Government Code, which provides:

> "**Sec. 133 Common Limitations on the Taxing Powers of the Local Government Units**. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> xxx
>
> (h) Excise taxes on article enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products; xxx"

Hence, petitioner contends that the lower court's conclusion that the Oversight Committee "exceeded its authority" in drafting Article 232(h) of the IRR is without any basis. It is the opinion of petitioner that this conclusion suggests that the Oversight Committee is totally ignorant of the law. Petitioner asserts that the lower court conveniently forgot the fact that the Oversight Committee is comprised of several members of Congress which enacted the LGC of 1991. Indeed, in the exercise of the power vested on it by Section 533 of the LGC, the Oversight Committee adopted Article 232(h) specifically to clarify the tax exemption provided under Section 133(h) of the LGC. In the same vein, the Oversight Committee could not have been unmindful of the legislative policy and purpose in regard to the mandate of

Section 133(h) precisely because several of its members are from the Legislature which drafted and approved the LGC[12]. The lower court's disregard of Article 232(h) of the IRR effectively renders the same invalid, violating the legal principle that the validity of a rule or regulation can only be assailed through a direct action and not through a collateral attack.[13]

Citing the cases of **San Miguel Brewery vs. Magno**[14] and **Lorenzo Shipping Corporation vs. The Honorable Court of Appeals and Filipinas Port Services, Inc.,**[15] petitioner further emphasizes the settled rule that regulations issued by administrative bodies pursuant to a valid delegation of legislative power, such as the IRR drafted and enacted by the Oversight Committee, have the binding force and effect of law. Its provisions are entitled to great respect, and have in their favor the presumption of legality. Thus, the implementing rules and regulations enacted pursuant to a valid delegation of power have the binding force of law as if enacted by the Legislature itself[16]. More so, petitioner argues that as enunciated in the consolidated cases of **Tatad vs. The Secretary of the Department of Energy, et al**., and **Lagman, et al. vs. Executive Secretary, et al**.[17], Mr. Justice Ricardo J. Francisco reminded the judiciary of their role in a democratic society in this manner: "Perhaps it bears reiterating that the question of validity of every statute is first determined by the legislative department of the government, and the courts will resolve every presumption

12 Memorandum for the Petitioner, Records, pages 640-641.
13 Memorandum for the Petitioner, Records, page 641.
14 G.R. No. L-21879, September 29, 1967 (21 SCRA 292).
15 G.R. No. L79644, May 11, 1988 (161 SCRA 319).
16 Memorandum for the Petitioner, Records, pages 644-645.
17 G.R. Nos. 124360 and 127867, November 5, 1997 (281 SCRA 330).

in favor of its validity. The courts will assume that the validity of the statute was fully considered by the legislature when adopted. xxx". Therefore, instead of blatantly disregarding Article 232(h) of the IRR, the lower court should have seen to its harmonization with Sections 133(h) and 143(h) of the LGC, the laws it is intended to implement.

On the main issue laid down for consideration, petitioner contends that respondent's imposition of the local business tax upon petitioner contravenes the declared national policy of the petroleum industry, the Local Government Code of 1991 and its Implementing Rules and Regulations, and pertinent rulings of the Department of Justice (DOJ) and of the Department of Finance (DOF), which all prohibit the imposition of local taxes on the business of manufacturing and/or distribution of petroleum products and on the products themselves.[18]

Quoting the provisions of the Local Government Code of 1991, more particularly, Section 133(h), petitioner insists that LGU's have no authority to levy any excise tax on the products enumerated under the National Internal Revenue Code of 1997, and among the products enumerated under the said Code are petroleum products. Accordingly, from the definition of the term "excise tax", there is no doubt that the business tax being levied by respondents upon petitioner for the privilege of engaging in the business of manufacturing, distribution or dealing in petroleum products is an excise tax. Hence, under the first limitation provided for in the said Section of the LGC,

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18 Memorandum for Petitioner, Records, page 439.

respondent Batangas City cannot legally levy the subject taxes on petitioner.

Further, under the second limitation of Section 133(h) of the LGC, respondent allegedly cannot impose any tax, fees, or charges on petroleum products. Petitioner reasons that the said limitation cannot be construed as referring only to petroleum products *per se*, otherwise the said Section would be meaningless because most of the taxable events happen when a transaction, such as manufacturing, distribution, dealing or selling of an article of commerce or a product, occurs. Thus, this second limitation does not only refer to taxes, charges or fees on the petroleum products *per se*, but to any business or transaction dealing with petroleum products. The differentiation is more apparent than real, for while the incidence of the tax is upon the petroleum products, *i.e.*, when they come into existence, what is actually being taxed is the privilege of manufacturing or producing them.

Petitioner also claims that the "existing national policy" as enunciated in Section 2 of Republic Act No. 6173[19], which, among others, underscores the fact that "petroleum and its products" are "vital to national security" and that "their continued supply at reasonable prices" are "essential to the general welfare". And to levy a business tax on the manufacture and distribution of petroleum products runs afoul of the declared national policy on the petroleum industry. Moreover, petitioner relies on the other provisions of

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19 An Act Declaring a National Policy on the Petroleum Industry Regulating the Activities and Relations of Persons and Entities engaged therein, Establishing an Oil Industry Commission to Effectuate the same, Defining its Functions, Powers and Objectives, and other Purposes, April 30, 1971.

Republic Act Nos. 8479[20] and 7638[21]. To further support its arguments, petitioner likewise presented the affidavit of Atty. Florecita P. Flores.[22]

On the other hand, respondents vehemently argue that Section 129 of the LGC provides that each LGU shall exercise its power to create its own source of revenue and to levy taxes, fees and charges subject to the provisions of the LGC, consistent with the basic policy of local autonomy. A close examination of Sections 143 and 143(h) clearly shows that the law does not provide for any exemption, when it states that businesses engaged in the manufacture and distribution of any article of commerce of whatever kind and nature and already subject to excise tax, value-added or percentage tax under the NIRC, as amended, are liable for business taxes thereunder, subject to the limitation that the same shall not exceed two percent (2%) of the gross sales or receipt of the preceding calendar year. Yet, when Article 232(h) of the Implementing Rules and Regulations was written to implement the aforementioned Sections, the Oversight Committee exceeded its authority and discretion when it granted tax exemptions where none was given. Despite the lengthy and wordy discussion on the alleged national policy supposedly exempting petitioner from the payment of business taxes, petitioner had miserably failed to point to any organic law which clearly and unequivocally exempts it from local taxation.

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20 An Act Deregulating the Downstream Oil Industry, and for Other Purposes.
21 An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes, December 9, 1992.
22 Annex "V", Petition for Review, Records, pages 264-294.

THIS COURT'S RULING

We grant the petition.

Petitioner is Not Subject to the Business Taxes on the Manufacture and Distribution of Petroleum Products

The court a quo is not correct in ruling that petitioner is subject to the business taxes on the manufacture and distribution of petroleum products.

The mandate to impose taxes granted to local government units (LGUs), in furtherance of the state policy on local autonomy, is categorical and long-established in the 1987 Philippine Constitution[23] and the Local Government Code (LGC).

However, such power to impose tax is not all-encompassing. It is subject to limitations as explicitly stated in Section 5 of the 1987 Constitution, as follows:

> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges **subject to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. *(Emphasis Supplied)*

The "Common Limitations on the Taxing Powers of Local Government Units" provided by Congress is found under Section 133 of the LGC.

Pertinent to this case is paragraph (h) of this provision of law which reads, as follows:

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23 Section 25, Article II. The State shall ensure the autonomy of local governments; Section 2, Article X. The territorial and political subdivisions shall enjoy local autonomy.

> SECTION 133. *Common Limitations on the Taxing Powers of Local Government Units.* — **Unless otherwise provided herein**, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall **not extend to the levy** of the following:
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> xxx xxx xxx
>
> (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and **taxes, fees or charges on petroleum products;** *(Emphasis Supplied)*
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> xxx xxx xxx

Based on the opening phrase "Unless otherwise provided herein", it is clear that the enumerated limitations are absolute, unless exceptions are specifically provided.

A reading of Section 133(h) reveals that there are two subject matters included in this section because of the word "and" which connects them. The following subject matters are covered: 1) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended; and 2) taxes, fees, and charges on petroleum products. Although petroleum products are subject to excise tax[24], it was taken out of that context by putting it after the word "and". Clearly, this is to emphasize the point that it was excluded in Section 143(h) of the LGC which allows the imposition of business taxes on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended.

Moreover, there is no qualification as to what "taxes, fees, or charges" to be imposed on the petroleum products. It is a well recognized rule that

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[24] Section 148, Chapter V, of the National Internal Revenue Code.

where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.*[25]

In other words, as long as the subject matter of the taxing powers of the LGUs is the petroleum products *per se* or even the activity or privilege related to the petroleum products e.g. manufacturing and distribution of the said products, it is covered by the said limitation and thus, no levy can be imposed. Thus, We agree with petitioner that this second limitation does not only refer to taxes, charges or fees on the petroleum products *per se*, but to any business or transaction dealing with petroleum products.

Section 143(h) of the LGC is hereunder quoted for easy reference:

> "**Sec. 143. TAX ON BUSINESS**. - The municipality may impose taxes on the following businesses:
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> xxx xxx xxx
>
> **(h)** On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That **on any business subject to the excise**, value-added or percentage tax **under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.**
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein." *(Emphasis Supplied)*

Because of the express limitation in Section 133(h), the above-quoted provision cannot be used as basis for the imposition of business taxes on manufacturing and distributing petroleum products.

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25 *Philippine British Assurance Co., Inc. vs. Intermediate Appellate Court* No.L-72005 May 29, 1987 (150 SCRA 521) citing *Colgate-Palmolive Phil., Inc. vs. Gimenez*, G.R. No. 14787, January 28, 1961, 1 SCRA 267 ; *Libudan vs. Gil* , G.R. No. 21163, May 17, 1972, 45 SCRA 17 ; *Dominador vs. Derahunan*, 49 Phil. 452 (1926); *Guevarra vs. Inocentes*, G.R. No. 25577, March 15, 1966, 16 SCRA 379 ; *Director of Lands vs. Gonzales*, G.R. No. 32522, January 28, 1963; *Alfato vs. Commission on Elections*, G.R. No. 52749, March 31, 1981, 103 SCRA 741 ; *Statutory Construction* by Ruben E. Agpalo,1986, pp. 143-144.

Hence, the argument that the LGC has vested LGUs the authority to collect business taxes on manufacturers and distributors of any article of commerce of whatever kind or nature[26] is not applicable in this case. "Petroleum products" should not be interpreted to be included in "any article of kind and nature".

It is elementary in statutory construction that when the law speaks in clear and categorical language, there is no reason for interpretation or construction but only for application.[27] Applying the law, this Court finds petitioner not liable to the business taxes on the manufacturing and distribution of petroleum products.

This is also in line with the Resolution of the Department of Justice (Re: Declaration of Ordinance No.7794 as Illegal and Unconstitutional)[28], quoted hereunder:

> "xxxx **Sections 143(h)** and 151 abovequoted **cannot be used in derogation on the clear exemption of petroleum products under Section 133(h).** The presumption always is that the law enacted by the legislature is complete by itself, that the legislature did perform its function well, and that it is intended to impart such meaning as will render the law operative and effective (People vs. Martin, G.R. NO. 38019, May 16, 1980, 98 SCRA 591 (1980); Asturias Sugar Central, Inc. vs. Commissioner of Customs, G.R. No. 19337, September 30, 1969, 29 SCRA 617 (1969). The legislature in enacting the Local Government Code of 1991, cannot be assumed to have inserted in the law a meaningless provision, one that government units can at their option freely ignore.
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> The intent to exclude petroleum products is further made evident in the implementing regulations. Article 232 thereof states:

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26 Sec. 143(a) and (b) Local Government Code.

27 *Land Bank of the Philippines vs. Court of Appeals & Department of Agrarian Reform vs. Court of Appeals* GR Nos. 118712 & 118745, respectively, July 5, 1996 (258 SCRA 404.)

28 Petron Corporation, Caltex Philippines, Inc., Mobil Philippines, Inc., Pilipinas Shell Petroleum Corp., Polly M. Cayetano vs. Mayor Alfredo S. Lim, Vice-Mayor Lito Atienza, Sangguniang Panglungsod, City Treasurer Anthony, City of Manila, September 17, 1993 signed by DOJ Secretary Franklin M. Drilon, Records, pages 317-318 (Annex X).

> Art. 232. Tax on Business.-
> The municipality may impose tax on the following businesses:
>
> (h) On any business, not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax provided that on any business subject to the exercise tax, VAT, or percentage tax under the NIRC, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year and provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline, and other petroleum products shall not be subject to any local tax imposed in this Article. (Emphasis supplied)
>
> **The implementing regulations of the Local Government Code have the force and effect of law (Art. 7, New Civil Code) and unless declared to be illegal, cannot be disregarded.** xxx " (Emphasis Supplied)

In its Opinion of October 25, 1993 on this point, the Department of Finance (DOF) has ruled that "Any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax. [29]

Hence, petitioner is correct in saying that Article 232(h) of the Implementing Rules and Regulations (IRR) of the LGC, which was formulated and drafted by the Oversight Committee, is in harmony with Section 133(h) of the LGC, the law it intended to implement. Likewise, the argument on the "existing national policy" as enunciated in Section 2 of Republic Act No. 6173[30] is affirmed.

The ruling of the Supreme Court in the case entitled **Philippine Petroleum Corporation vs. Municipality of Pililia, Rizal**[31] does not apply here. Under the old Local Tax Code[32], the law applicable in the case of

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29 DOF Opinion cited in Alberto C. Agra, *"Compendium of Decisions, Rulings, Resolutions and Opinions on Local Autonomy and Local Government"*, 1996 Ed. , page 145.
30 *Supra* ,Note 19.
31 G.R. No. 90776, June 3, 1991 (198 SCRA 82).
32 Presidential Decree No. 231, June 28, 1973.

Pililia, the following are the common limitations on the taxing powers of local governments:

> SECTION 5. *Common limitations on the taxing powers of local governments.* — The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:
>
> (a) Documentary stamp tax;
>
> (b) Taxes on forest products and forest concessions;
>
> (c) Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided in this Code; SEIDAC
>
> (d) Taxes on income of any kind whatsoever;
>
> (e) Taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof;
>
> (f) Customs duties, registration fees of vessels except as otherwise provided in this Code, and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues, except wharfage on wharves constructed and maintained by the local government concerned at rates not exceeding those fixed by the Tariff and Customs Code;
>
> (g) Taxes of any kind on banks and insurance companies;
>
> (h) Taxes on premiums paid by owners of property who obtain insurance directly with foreign insurance companies;
>
> (i) Export taxes, fees, or other levies on Philippine finished, manufactured or processed products, and products of Philippine cottage industries;
>
> (j) Taxes and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local governments in the guise of unreasonable charges for wharfage, use of bridges, or otherwise, or other taxes in any form whatever upon such goods or merchandise;
>
> (k) Taxes or fees on agricultural products when sold by the farmer or producer thereof, whether in their original form or not; and
>
> (l) Percentage tax on sales, except as otherwise provided in this Code.

Petroleum products are not expressly covered by the common limitations on the taxing powers of local governments under the old Local Tax Code. On the other hand, such exemption was categorically stated under Sec. 133 of the 1991 LGC. Hence, the Pililia ruling is not applicable.

Based on the foregoing discussions, petitioner is clearly not subject to the business taxes on the manufacturing and distribution of petroleum products.

Mayor's Permit Was Grossly Excessive and Unreasonable

We agree with the findings of the lower court that Mayor's Permit Fees

paid under protest was grossly excessive and unreasonable.

The mayor's permit is imposed in the exercise of police power primarily for purposes of regulation. Being such, it must be reasonable and commensurate with the cost of regulation, inspection and licensing of a business or occupation or practice of a profession or calling. Pertinent to this is Section 147 of the LGC which is quoted hereunder:

> SECTION 147. *Fees and Charges.* — The municipality may impose and collect such **reasonable fees and charges on business** and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, **commensurate with the cost of regulation, inspection and licensing** before any person may engage in such business or occupation, or practice such profession or calling. *(Emphasis Supplied)*

Article 233 of IRR provides for a clear limit on what reasonable fees and charges should be. This provision complements with Section 147 of the LGC. It reads, as follows:

> ARTICLE 233. *Fees and Charges.* — The municipality may impose and collect such **reasonable fees and charges** on businesses and occupations and, except as reserved to the province in Article 229 of this Rule, on the practice of any profession or calling before any person may engage in such business or occupation, or practice such profession or calling **provided** that **such fees or charges shall only be commensurate to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance.**
>
> **No such fee or charge shall be based on capital investment or gross sales or receipts** of the person or business liable therefor. *(Emphasis Supplied)*

Based on the above-quoted provision, for fees and charges to be reasonable: fees and charges should be proportionate/equal to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance. The last paragraph of Article 233 merely affirms the basis of the reasonableness of the fees and charges by saying that

no fee/charge shall be based on capital investment or gross receipts of the person or business.

In this case, the mayor's permit being imposed is based on the gross receipts of the preceding calendar year although in a graduated scale. This is in clear violation of Section 147 of the LGC, as implemented by Article 233 of IRR.

The finality of the Decision of the lower court as regards the issue of the Mayor's Permit Fees was only insofar as the lower court found that the said payment made was excessive and unreasonable.

If petitioner would read carefully into the Decision of the lower court, the judgment about the revocation of the assessment of the Mayor's Permit Fees for the taxable year 2002 was "without prejudice to its modification by the respondents, Batangas City, et al."

This portion of the lower court's Decision was interpreted by the respondent in its "Memorandum" filed on June 28, 2006 in this manner, "This means that the Respondent City of Batangas is permitted to keep the payment provided that the provision of the Batangas City Tax Code on the matter is modified. In this regard, the City of Batangas has decided to comply with the mandate of the court and is presently modifying the tax code." However, until now, no such modification was manifested to the Court.

Since, respondents failed to modify the computation of the mayor's permit fee and based on justice and equity, petitioner should be refunded with the mayor's permit fees ordered revoked by the court a quo.

The details[33] of the additional amount of P4,299,851.00 mayor's permit fees are as follows:

	Manufacturer	Distributor
Mayor's Permit Fee	**P704,305.00**	**P3,166,555.00**
License Fee	70,535.50	
Prot. Fee Res/Bus		25,000.00
Fire Insp. Fee		1,000.00
Occ./Prof.Tax		
San Permit & San Insp. Fee		12,000.00
Fire Code Fee		320,455.00
Total Amount	**P774,840.50**	**P3,525,010.50**

The amount to be refunded is not the full amount of P4,299,851.00 but the excessive mayor's permit for manufacturing and distributing in the amount of P704,305.00 and P3,166,555.00, respectively or in the total amount of P3,870,860.00.

Court cannot rule on whether or not closure/suspension of operation of Tabangao Refinery of PSPC Tabangao would serve the welfare of the consuming public

This Court has already ruled that petitioner is not subject to the business taxes on the manufacturing and distribution of petroleum products pursuant to explicit provisions of law. Hence, We see no reason to dwell on the fourth issue because the wisdom of the law is being invoked.

The Court is not in the position nor is it inclined to rule on this issue considering that wisdom of the law is limited to the legislature. On the other

[33] Petition for Review, page 10.

hand, the primary duty of the court is to apply the law.

WHEREFORE, premises considered, the judgment/order of the RTC Branch II of Batangas City is hereby **MODIFIED.** As to the business taxes on the manufacture and distribution of petroleum products, We find the petitioner not liable for the same. As to the mayor's permit, We find that it is excessive. Accordingly, the respondent is hereby a)declared **legally proscribed** from imposing business taxes on the manufacture and distribution of petroleum products and b) **to refund** in the form of tax credit the excessive mayor's permit in the amount of **THREE MILLION FIVE HUNDRED TWENTY FIVE THOUSAND TEN PESOS and FIFTY CENTAVOS (P3,525,010.50).**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(With Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION ***Petitioner,***	**C.T.A. AC NO. 10** **(RTC Civil Case No. 7109)** Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
BATANGAS CITY, BENJAMIN E. PARGAS in his capacity as CITY TREASURER and TEODULFO A. DEGUITO in his capacity as CITY LEGAL OFFICER OF BATANGAS CITY, ***Respondents.***	**Promulgated:** JUN 2 1 2007

x ---------- x

DISSENTING OPINION

PALANCA-ENRIQUEZ, J.:

With all due respect to the Majority Opinion, after a careful examination of the pertinent facts of the case, in relation to applicable laws and jurisprudence, I am constrained to register my dissent for settled is the rule that where the provisions of the law are clear and unambiguous

there is no room for interpretation. For the first duty of the court is to apply the law *(Villanueva, Jr. vs. Estoque, 346 SCRA 234)*.

In the instant case, I found petitioner liable for business taxes on the manufacture and distribution of petroleum products, as clearly provided in *Section 143 of the Local Government Code ("LGC")*, to wit:

> "SEC. 143. Tax on Business – The municipality may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:
>
> xxx xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:
>
> xxx xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."

Pursuant to the aforesaid provision, it is clear that the City of Batangas is empowered to enact an ordinance imposing business tax on the manufacturers of any article of commerce of whatever kind or nature, on the wholesalers, distributors, or dealers in any article of commerce of whatever kind or; on any business, not otherwise specified in *subsections (a) to (g) of Section 143 of the LGC*, which the sanggunian may deem proper to tax.

Notwithstanding the foregoing provision, the Majority Opinion holds that "because of the express limitation in *Section 133 (h)*, the above-quoted provision cannot be used as basis for the imposition of business taxes on manufacturing and distributing petroleum products."

In this regard, *Section 133 (h) of the LGC* is quoted hereunder, for expediency:

> "SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

xxx xxx

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

xxx xxx."

Construing the aforecited provision, petitioner contends that there are two limitations prescribed in the said section. First, relying on the definition of "excise tax", it posits that there is no doubt that the business tax being levied by respondents upon petitioner is the privilege of engaging in the business of manufacturing, distribution or dealing in petroleum products, which is an excise tax. In sum, it is the petitioner's contention that the phrase "Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, xxx" covers excise taxes on manufacturing and/or distribution business. Second, petitioner asserts that the last phrase in *Section 133 (h)*, which reads: "xxx and taxes, fees or charges on petroleum products", cannot be construed as referring only to petroleum products *per se,* but to any business or transactions dealing with petroleum products, to which construction, the Majority Opinion concurred with.

However, with all due respect to the opinion of my esteemed colleagues, the said construction of *Section 133 (h) of the LGC* goes beyond the literal import of the statute. Basic is the rule in statutory construction that when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application *(Land Bank of the Philippines vs. Court of Appeals and Department of Agrarian Reform vs. Court of Appeals, 258 SCRA 407).*

Contrary to the assertion of the petitioner and the Majority Opinion, *Section 133 (h)* clearly speaks for itself. A plain reading of the subject provision would show that the limitation is not applicable to business taxes. What is circumscribed by the provision is the imposition of excise taxes upon the articles or products, and not upon the privilege of manufacturing or distributing the same, which are distinct kinds of taxes. This pronouncement is clearly worded by the law that warrants no other meaning or implication, the local government units taxing power shall not extend to the levy of excise taxes on articles enumerated under the *National Internal Revenue Code ("NIRC"), as amended,* and taxes, fees or charges on petroleum products. Simply stated, the limitations under

Section 133 (h) apply only when what is being taxed is the article itself and not the business in which said article is manufactured or distributed.

Corollarily, it must be noted that *Sections 129 and 148 of the NIRC, as amended*, specifically impose excise taxes on petroleum products, as follows:

> "SEC. 129. Goods Subject to Excise Taxes. – Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale 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'."
>
> "CHAPTER V
> EXCISE TAX ON PETROLEUM PRODUCTS
>
> 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.
>
> xxx xxx."

Pursuant to the aforecited provisions, I agree with the findings of the lower court that the NIRC recognizes the dichotomy of a tax on business as distinct from a tax on the product itself. The excise taxes imposed by the NIRC refer to taxes on certain specified goods, manufactured or produced locally or imported. It is not an excise tax on the privilege of doing business, but an excise tax levied on the property. It is considered taxes on the property because they are imposed directly on certain specified goods.

It is doctrinally settled that a tax on business is distinct from a tax on the article itself. In the case of *Philippine Petroleum Corp. vs. Municipalilty of Pililla, Rizal (198 SCRA 89)*, the Supreme Court ruled:

> "Furthermore, while Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature. A tax on business is distinct from a tax on the article itself. Thus, if the imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436."

With all due respect to the Majority Opinion, it is my modest view that the above ruling applies to the present case. The above ruling of the Supreme Court on the matter is a general principle involving the kind of taxes that maybe imposed either upon the privilege of doing business or upon the product of the business itself. It has nothing to do with the power or the limitation of the local government units to impose business taxes.

As aptly ruled by the lower court:

> "The ruling of the Supreme Court in the case of Philippine Petroleum Corporation vs. Municipality of Pililia, Rizal is still controlling and has not been superseded as yet, thus:
>
> 'A tax on business is distinct from a tax on the article itself. Thus, if no imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.'
>
> Indeed, the above ruling of the Supreme Court was decided when the LGC has not yet been enacted and the previous laws did not prohibit LGUs from imposing excise taxes on petroleum products. But then, the ruling of the Supreme Court on the matter is a general principle involving the kind of taxes that may either be imposed upon the privilege of doing business or, upon the product of the business itself. It distinguishes the nature of the classified taxes and has nothing to do with the powers of the LGUs to impose business taxes xxx."

Pursuant to the aforequoted ruling and considering further that *Section 133 (h) of the LGC*, in connection with the provision of the NIRC, is explicit in stating that the prohibition in the imposition of taxes, fees or charges is limited to the petroleum products, local government units are not prohibited from imposing excise tax on the exercise of the privilege in engaging in the manufacturing and/or distribution business of petroleum products. As such, business taxes, which are traditionally imposed by the local government units, like in the case of the City of Batangas, were not withheld by the LGC.

Consequently, the proposition of the petitioner that "since the excise tax refers to a tax upon the performance of an act, enjoyment of a privilege or engaging in an occupation, it follows that Batangas City is legally proscribed from imposing business taxes on the manufacture and/or distribution of petroleum products", is devoid of merit. Such argument would violate the state policy ensuring local autonomy *(Section 25, Article II of the1987 Constitution)*. It would curtail the local government units' authority to impose taxes on any business, including those businesses subject to excise tax, as ordained under the provision of

Section 143 (h) of the LGC. In effect, the said proposition would render nugatory and inoperative the provision of *Section 143 (h)*; a denouncement which offends the basic principle of statutory construction that "a provision of a statute should be so construed as not to nullify or render nugatory another provision of the same statute *(Agpalo, Statutory Construction, 5th ed., 256)*. *Interpretatio fienda est ut res magis valeat quam pereat.* A law should be interpreted with a view to upholding rather than destroying it *(People vs. Derilo, 271 SCRA 666)*.

Moreover, as between *Sections 133 (h) and 143 (h) of the LGC*, *Section 143* prevails. *Section 143* provides the specific power of a city/municipality to impose business taxes. Specifically, *Section 143 (h)* empowers the city or municipality to impose a business tax on a business already subject to excise tax. On the other hand, *Section 133* is a general provision that governs the common limitations of local government units' authority to tax. It is an elementary rule in statutory construction that where there is in the same statute a particular enactment and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative,

and the general enactment must be taken only in such cases within its general language as are not within the provisions of the particular enactment *(Manila Railroad Co. vs. Collector of Customs, 52 Phil 951-952).*

Hence, there is no doubt that the City of Batangas may impose business taxes on the manufacture and distribution of petroleum products, notwithstanding the provision of *Section 133 (h) of the LGC.*

Petitioner invokes the provision of *Article 232 (h) of the Implementing Rules and Regulations ("IRR") of the LGC,* which states in part that "xxx any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed in this article". A plain reading of *Sections 133 (h) and 143 of the LGC*, the substantive provisions to be implemented, would show that the IRR is in conflict with the said specific provisions. The IRR deviated from its purpose to carry out the provisions of the LGC for the achievement of local autonomy.

As correctly pointed out by the lower court:

> "It must be stressed that the function of promulgating rules and regulations should be exercised for the purpose of carrying out the provisions of the law into effect. Administrative regulations cannot extend the law or amend a

> legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law. The Court may disregard contemporaneous construction where there is no ambiguity in the law. In this case, the Oversight Committee which was tasked to issue appropriate Rules and Regulations for the efficient and effective implementation of the LGC, has exceeded its authority. In granting tax exemption, which is not found in the provisions of Sections 143 of the LGC, the Oversight Committee subverted the principle of local autonomy as defined under the LGC and the Constitution."

In the case *of Province of Batangas vs. Romulo (429 SCRA 763)*, the Supreme Court struck down the Oversight Committee's Resolution implementing the release of the Internal Revenue Allotment ("IRA") and ruled as follows:

> "Indeed, the Oversight Committee exercising discretion, even control, over the distribution and release of a portion of the IRA, the LGSEF, is an anathema to and subversive of the principle of local autonomy as embodied in the Constitution. Moreover, it finds no statutory basis at all as the Oversight Committee was created merely to formulate the rules and regulations for the efficient and effective implementation of the Local Government Code of 1991 to ensure 'compliance with the principles of local autonomy as defined under the Constitution xxx".

In the same vein, constricting the local government units' power to impose business taxes on businesses engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other

petroleum products is anathema to and subversive of the principle of local autonomy. Evidently, *Article 232 (h) of the IRR of the LGC* cannot prevail over the literal import of the provisions of *Sections 143 and 133 (h) of the LGC.*

It cannot be gainsaid by the petitioner that in disregarding the provision of *Article 232 (h) of the IRR of the LGC*, the lower court rendered invalid the IRR, violating the legal principle that the validity of a rule or regulation can only be assailed through a direct attack.

A reading of the decision will show that the lower court did not make any declaration of invalidity of the IRR . The lower court merely disregarded the IRR because it was in conflict with the substantive provision of the law, which it intends to implement. Pertinent portion of the said decision is quoted hereunder:

> "The Court is not unmindful that Article 232(h) of the IRR adopted by the Oversight Committee to implement the LGC has incorporated that any business engaged in the production and manufacture of petroleum products shall not be subject to any local tax. However, the said IRR is in conflict with the specific provision of Section 143, the substantive provision which is intended to be implemented. The IRR deviated from its purpose to carry out the provisions of the LGC for the achievement of local autonomy.

xxx xxx."

Well settled is the rule that a court may disregard an administrative order, although it was not a direct attack for the purpose, when the same is in conflict with the governing statute. In the case of *China Banking vs. Court of Appeals, et al. (265 SCRA 341-342),* the Supreme Court, ruled:

> "With respect to the third issue, we find private respondent's contention that Administrative Order No. 3 is the governing rule in foreclosure of mortgages misplaced. The parties, we note, have stipulated that the provisions of Act No. 3135 is the controlling law in case of foreclosure.
>
> xxx xxx
>
> Moreover, Administrative Order No. 3 is a directive for execution judges and clerks of courts which, under its preliminary paragraphs, is '[i]n line with the responsibility of an Executive Judge, under Administrative Order No. 6, dated June 30, 1975, for the management of courts within his administrative area, included in which is the task of supervising directly the work of the Clerk of Court, who is also the Ex-officio Sheriff, and his staff, xxx. Surely, a petition for foreclosure with the notary public is not within the contemplation of the aforesaid directive as the same is not filed with the court. At any rate, Administrative Order No. 3 cannot prevail over Act No. 3135, as amended. It is an elementary principle in statutory construction that a statute is superior to an administrative directive and the former cannot be repealed or amended by the latter."

Accordingly, *Article 232 (h) of the IRR of the LGC* could also be validly disregarded for being in conflict with the clear

wordings of the governing provisions, specifically, *Sections 133 (h) and 143 of the LGC.*

Finally, petitioner cannot find solace in the provisions of Republic Act (R.A.) No. 6173, otherwise known as "An Act Declaring a National Policy on the Petroleum Industry Regulating the Activities and Relations of Persons and Entities engaged therein, Establishing an Oil Industry Commission to Effectuate the same, Defining its Functions, Powers and Objectives, and other Purposes; R.A. No. 8479, otherwise known as "An Act Deregulating the Downstream Oil Industry, and for Other Purposes"; and R.A. No. 7638, otherwise known as "An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes". Nowhere in the said laws is there a provision that directly or indirectly grants tax exemptions to petitioner, or to any other businesses engaged in the manufacture and/or distribution of petroleum products. As aptly ruled by the lower court:

> "Apropos the existing national policy, which the petitioner also invokes to have been violated, this Court

> carefully scanned each and every provisions of R.A. 6173, R.A. 7638, and R.A. 8479, but found therein no specific state policy that declares an exemption of petroleum products from business taxes, much less, a prohibition for the LGUs to impose the same taxes on petroleum products. What is commonly identified by the said laws is the policy of the state to conserve the use and supply of energy at reasonable prices considering the international price levels and collusive practices in the industry. The statutes were focused towards the continuous supply of petroleum and aversion of predatory pricing that culminated with the adoption of liberalization and deregulation of the oil industry. To repeat, there is nothing from the said laws that directly or indirectly exempted the petroleum and petroleum products from local taxes. It bears emphasis that exemptions from taxation are not favored; they are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. He who claims an exemption from his share of the common burden in taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken. An exemption cannot be permitted to exist upon vague implication."

Finding no reversible error, I vote to dismiss the present Petition For Review and to affirm the appealed Decision dated October 29, 2004 and Order dated February 28, 2005.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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