REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

LEPANTO CONSOLIDATED MINING COMPANY, *Petitioner,*	**C.T.A. AC NO. 13** **(RTC Civil Case No. 01-CV-1652)** Members:
-versus-	CASTAÑEDA, JR., Chairman UY, and PALANCA-ENRIQUEZ, JJ.
HON. MAURICIO B. AMBANLOC, in his capacity as the Provincial Treasurer of Benguet, *Respondent.*	**Promulgated:** FEB 2 7 2006

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Each Local Government unit shall have the power to create its own sources of revenue 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 *(Section 5, Article X, 1987 Philippine Constitution).*

THE CASE

On appeal before Us is the Decision dated November 25, 2004 rendered by the Regional Trial Court (RTC), La Trinidad, Benguet, Branch 62, in Civil Case No. 01-CV-1652, entitled *"Lepanto Consolidated Mining Company vs. Hon. Mauricio B. Ambanloc, in his capacity as the Provincial Treasurer of Benguet"*, the dispositive portion of which reads as follows:

> "WHEREFORE, viewed from the foregoing, the Court finds that Lepanto Consolidated Mining Company should pay Benguet Province through its Provincial Treasurer the sum of ONE MILLION NINE HUNDRED ONE THOUSAND EIGHT HUNDRED NINETY THREE & 22/100 PESOS (P1,901,893.22) as payment for sand and gravel tax from the total aggregate of such materials extracted by Lepanto for the period 1997 to June 2000 from areas covered by its mining lease contract situated at Barangays Nayak and Sapid, in the municipality of Mankayan. Such tax shall bear interest at the rate of two percent (2%) per month in accordance with Sections 165 to 169 of R.A. No. 7160 from the time the corresponding payments should have been made.
>
> However, the Court finds no cogent basis for the imposition of a surcharge as imposable under Section 167 of R.A. No. 7160 as the taxability of petitioner regarding the above activities can be considered a novel question of law and the Court finds neither negligence nor fraud in such deficiency.

SO ORDERED."

THE FACTS

The pertinent facts and antecedent proceedings in this case, as agreed upon by the parties, during the pre-trial on November 15, 2002, are as follows:

Lepanto Consolidated Mining Company (hereafter petitioner) is a domestic corporation organized and existing under Philippine laws with principal office at the 21st Floor, BA-Lepanto Building, Paseo de Roxas, Makati City. It conducts its mining operations and related works and activities in Nayok, Municipality of Mankayan, Province of Benguet and maintains its field offices in said municipality.

On September 9, 1983, petitioner was granted and issued Mining Lease Contract No. MRD-372 by the Philippine Government, covering, among others, "Tikem" mining claim, located at Sitio Nayok, Barrio Palasou (Suyoc), Municipality of Mankayan. The lease contract has a term of twenty five (25) years which will expire on September 8, 2008.

In accordance with the mining lease contract, related communications between petitioner and the Director of the Bureau of

Mines, and policy guidelines, petitioner extracted and removed sand and gravel materials from its "Tikem" leased mining claim and exclusively utilized the same for its mining operations.

Petitioner and its subsidiary, South East Gold Resources, Inc., entered into a Mineral Production Sharing Agreement No. 001-90 (MPSA) dated March 3, 1990 with the Republic of the Philippines to undertake mining exploration, development and utilization of minerals, for and in behalf of the State. This mineral production sharing agreement is in full force and effect.

In the inspection report of the inspectors team of the Province of Benguet and the report submitted to the Department of Environment and Natural Resources (DENR), petitioner extracted sand and gravel within its mine site from the year 1997 to June 2000, and the total aggregate sand and gravel extracted was about 262,330.1 cubic meters.

Invoking *Section 138* of the *Local Government Code of 1991*, the Provincial Treasurer of Benguet (hereafter respondent), in his letter dated February 14, 2001 to the petitioner, assessed and demanded the amount of P1,901,893.22 as payment for sand and gravel tax for the total aggregate of such material extracted covering the period from 1997 to June 2000 from areas covered by its mining lease contract.

In a letter-protest dated June 25, 2000, petitioner categorically protested the imposition of the sand and gravel tax on the ground that the extraction and removal of sand and gravel materials from the areas covered by its Mining Lease Contract No. MRD-372 and MPSA No. 001-90 were used exclusively for its mining operations, hence, exempted for any kind of taxes.

On July 31, 2001, respondent denied petitioner's letter-protest, a copy of which was received by petitioner on August 7, 2001.

On September 5, 2001, petitioner filed an appeal under Section 195 of the Local Government Code of 1991, docketed as Civil Case No. 01-CV-1652 before the RTC of La Trinidad, Benguet, Branch 62, questioning the above assessment and demand for sand and gravel tax.

On November 5, 2001, respondent filed his Answer and/or Opposition.

At the pre-trial held on November 15, 2002, the parties stipulated that the only legal issue to be resolved is: "Whether or not petitioner is liable for sand and gravel tax assessed by the respondent Provincial Treasurer, on said sand and gravel extracted by petitioner in areas covered by its mining lease contracts or agreements and used exclusively on its mining operations".

After the termination of the pre-trial of the case, the parties submitted documentary evidence (without any testimonial evidence) in support of their respective positions, after which, the parties simultaneously submitted their respective memoranda.

On November 25, 2004, the court a quo rendered the assailed decision in favor of the respondent in the terms earlier set forth.

Aggrieved, petitioner filed the instant appeal.

On January 9, 2005, the Court required respondent to comment on the petition, within ten (10) days from notice, and gave petitioner five (5) days from receipt of the comment within which to file its reply, if necessary.

On July 21, 2005, respondent filed his "Comment".

On August 26, 2005, petitioner filed its "Reply (To Comment dated July 21, 2005)".

On September 28, 2005, We gave due course to the petition and granted the parties thirty (30) days from notice within which to file their simultaneous memoranda, afterwhich the petition shall be considered submitted for decision.

Both parties having complied thereto, the case was deemed submitted for decision on January 9, 2006.

ISSUE

The sole issue in this case is:

> WHETHER OR NOT PETITIONER LEPANTO CONSOLIDATED MINING COMPANY IS LIABLE FOR THE SAND AND GRAVEL TAX ASSESSED [PURSUANT TO SECTION 138 OF THE LOCAL GOVERNMENT CODE OF 1991] BY RESPONDENT HON. MAURICIO B. AMBANLOC, PROVINCIAL TREASURER OF BENGUET, ON THE SAND AND GRAVEL EXTRACTION MADE BY IT [PETITIONER] IN AREAS COVERED BY ITS MINING LEASE CONTRACTS OR AGREEMENTS AND USED EXCLUSIVELY FOR ITS MINING OPERATIONS.

Petitioner's Theory

Arguing for its non-liability for sand and gravel tax, petitioner claims that:

> "A. SECTION 138 OF THE LOCAL GOVERNMENT CODE OF 1991, TAKEN TOGETHER

WITH THE PROVISIONS OF THE REVISED REVENUE CODE OF BENGUET, CONTEMPLATES A SITUATION WHEREBY ONLY ESTABLISHMENTS ENGAGED IN SAND AND GRAVEL BUSINESS SHOULD BE TAXED. SAID TAX SHOULD NOT BE IMPOSED ON PETITIONER BECAUSE IT IS NOT ENGAGED IN SAND AND GRAVEL BUSINESS.

B. THE SAND AND GRAVEL EXTRACTION OF PETITIONER WAS MERELY INCIDENTAL TO ITS PURPOSE AS A MINING COMPANY. THE BUSINESS OF PETITIONER COMPANY INEVITABLY INVOLVES EXCAVATION AND/OR QUARRYING AND THAT ANY SAND, GRAVEL OR QUARRY MATERIALS THAT MAY HAVE BEEN EXTRACTED FROM ITS LEASED MINING CLAIMS ARE EXCLUSIVELY USED FOR ITS MINING OPERATIONS AND/OR UTILIZED IN THE PERFORMANCE CARRYING ON OR CONSUMMATION OF ITS MINING ACTIVITIES.

C. THE TRIAL COURT'S RELIANCE ON THE DECISION OF THE SUPREME COURT IN "*PROVINCE OF BULACAN VS. COURT OF APPEALS", G.R. NO. 126232, NOVEMBER 27, 1998,* PURPORTEDLY AUTHORIZING THE PROVINCIAL GOVERNMENT TO IMPOSE THE SAND AND GRAVEL TAX IN QUESTION ON PETITIONER IS MISPLACED.

D. THE SAND AND GRAVEL TAX IMPOSED ON PETITIONER IS EFFECTIVELY A TAX AGAINST THE STATE, ALL EXCISE TAXES IMPOSED ON THE PROJECT BEING CHARGEABLE TO THE NATIONAL GOVERNMENT'S PRODUCTION SHARE IN THE MINERAL PRODUCTION SHARING AGREEMENT (MPSAA). THE GRAVEL AND SAND TAX PARTAKES OF THE NATURE OF AN EXCISE TAX.

E. THE APPARENT DOUBT IN THE INTERPRETATION OF SECTION 138 OF THE LOCAL GOVERNMENT CODE OF 1991 VIS-À-VIS THE REVISED REVENUE CODE OF BENGUET RELATIVE TO THE TAX ON SAND, GRAVEL AND OTHER QUARRY RESOURCES SHOULD BE RESOLVED IN FAVOR OF PETITIONER."

Respondent's Theory

On the other hand, respondent counter argues that:

1) The power to impose sand and gravel tax has been expressly delegated by Congress to provinces through the Local Government Code of 1991 and R.A. No. 7942 otherwise known as the Philippine Mining Act of 1995.

2) The provision of the Benguet Revenue Code which imposes sand gravel tax is the enabling provincial law of Sec. 138 of the Local Government Code of 1991 and so with the related provisions in R.A. No. 7942.

3) Tax exemption must be clear in the language of the law and is construed strictly against the taxpayer.

4) The court *a quo* did not rely merely on the decision of the Supreme Court in "Province of Bulacan vs. Court of Appeals, G.R. No. 126232, November 27, 1998 but with the existing applicable laws and other subsequent decisions.

THE COURT'S RULING

The appeal is bereft of merit.

The sole issue raised in the present appeal is not novel as the Supreme Court, in the case of *Province of Bulacan vs Court of Appeals (299 SCRA 454),* had already resolved said issue. In said case, the Supreme Court affirmed the power and authority of the local government units to impose tax on sand, gravel, stones and other quarry materials extracted from public lands, as in this case. The Supreme Court categorically ruled that the *Local Government Code* expressly empowered provincial government to impose a tax on stones, sand and gravel, earth and other quarry resources extracted from public lands. Thus:

> "It is clearly apparent from the above provision that the National Internal Revenue Code levies a tax on *all* quarry resources, regardless of origin, whether extracted from public or private land. Thus, a province may not ordinarily impose taxes on stones, sand, gravel, earth and other quarry resources, as the same are already taxed under the National Internal Revenue Code. The province can, however, impose a tax on stones, sand, gravel, earth and other quarry resources extracted from public land because it is expressly empowered to do so under the Local Government Code. As to stones, sand, gravel, earth and other quarry resources extracted from private land, however, it may not do so, because of the limitation provided by Section 133 of the Code in relation to Section 151 of the National Internal Revenue Code."

Clearly, despite the provision of the *NIRC* levying a tax on all quarry resources, whether extracted from public or private land, the Supreme Court still upheld the power of the province to impose a tax on stones, sand, gravel, earth and other quarry resources extracted from public land having been expressly empowered to do so under the *Local Government Code of 1991*.

Section 134 of the *Local Government Code of 1991* defines the scope of the taxing authority of the provincial government, while *Section 138* thereof governs the authority of the provincial government to impose tax on stones, sand gravel and other quarry materials. They respectively provide:

> "SEC. 134. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the province may levy only the taxes, fees, and charges as provided in this Article."
>
> "SEC. 138. *Tax on Sand, Gravel and other Quarry Resources.* –The province may levy and collect not more than ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from *public lands* or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.
>
> xxx xxx"

Petitioner likewise contends that the Benguet Revenue Code was meant to tax the extraction and removal of sand, gravel and other quarry materials by permittees and not those who are excepted from procuring the same and which extraction is merely incidental to its operations. Not being a permittee but rather one, which is primarily engaged in mining business, petitioner is not liable to tax, demanded by respondent pursuant to *Section 138* of the *Local Government Code of 1991.* In fact, the records do not show that petitioner is engaged in sand and gravel business, the nature of operation of petitioner's business inevitably involves excavation and /or quarrying, an incident to its mining operation. Besides, the extraction of quarry materials in the case of *Province of Bulacan vs Court of Appeals* appears to be for commercial purpose or use, as said materials seem to be components of the product of Republic Corporation, an entity engaged in cement industry.

We are not convinced. Nowhere in the cited decision of the Supreme Court nor in the Local Government Code does it mention that the extraction of the sand and gravel and such other quarry materials can be subject to tax only when it is for commercial or for business purposes.

Section 138 of the Local Government Code is very clear. Stones, sand, gravel, earth and other quarry resources extracted from public lands are taxable. The law does not provide that to be subject to tax, the extracted sand, gravel and other quarry resources should be for commercial or for business purpose. Whether the extraction activities are for commercial purpose or merely incidental to the primary purpose of a mining company or any other purpose, the extracted stones, sand, gravel, earth and other quarry resources extracted from public lands are taxable.

It is settled that statutory provisions should not be given a restricted meaning where no restrictions are indicated by the terms of the statute itself *(Lo Chan vs Ocampo, 77 Phil 635).* Or stated in broader and more familiar terms, where the law does not distinguish, courts should not distinguish *(Recaña, Jr. vs Court of Appeals, 349 SCRA 24).*

The argument that the sand and gravel tax imposed is virtually an excise tax, it being a tax on the performance, carrying on, or exercise of activity, and respondent, in imposing the sand and gravel tax, disregarded the rule barring local government units from levying taxes, fees or charges of any kind on the National Government, cannot be sustained. It bears stressing that excise taxes are taxes imposed on the "privilege" of severing or contracting materials from the earth. It is not a tax on the mineral itself, although the basis of measurement of said tax is the volume extracted or the quality thereof. Furthermore, the subject of the tax being collected from Lepanto is on the sand and gravel extracted, and not on tax on the extracted metallic minerals covered by the National Internal Revenue Code.

Petitioner's contention that it is an agent of the National Government, and is thus exempt from the local tax is not persuasive. *Section II (par. 2.10) of the Mineral Production Sharing Agreement (MPSA)* defines contractors, as follows:

> "2.10 'CONTRACTORS' MEANS LEPANTO CONSOLIDATED MINING COMPANY AND/OR FAR SOUTH EAST GOLD RESOURCES, INC. AND THEIR ASSIGNEE OR ASSIGNEES OF ANY INTEREST UNDER THIS AGREEMENT PROVIDED SUCH ASSIGNMENT OF ANY SUCH INTEREST IS ACCOMPLISHED PURSUANT TO THE PROVISIONS HEREOF." (*Exhibit "E"*)

Petitioner is not an agent or representative of the State, but an independent contractor. As such, *Section IX or paragraph 9.1 of the*

Mineral Production Sharing Agreement (MPSA) specifying the rights and obligations of the peartiers expressly provided:

> "(G) Pay taxes or obligations in accordance with existing laws, rules and regulations subject to the provisions of Section VII above." (*Exhibit "E"*)

The aforequoted provision expressly provides that petitioner is subject to taxes. Under *Section 133 (o) of the Local Government Code,* only the National Government, its agencies and instrumentalities and local government units are exempt from the imposition of taxes, fees or charges of any kind. Private entities, like herein petitioner, cannot claim for tax exemption.

Laws granting tax exemption are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority.

As a general rule, the power to tax is an incident of sovereignty as it is inherent in the State, belonging as a matter of right to every independent government (*Churchill and Tait vs. Concepcion, 34 Phil. 969; Tax principles and Remedies, 2nd ed., 2005, p. 13, by Justice Japar B. Dimaampao*). It is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it *(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 679)*. Nevertheless, effective limitations thereon may be imposed by the people through their Constitutions. Our Constitution, for instance, provides that the rule of taxation shall be uniform and equitable and Congress shall evolve a progressive system of taxation *(Section 28(1), Article VI, 1987 Constitution)*. So potent indeed is the power that according to the 1903 dictum of Justice Marshall, "the power to tax involves the power to destroy." The web or unreality spun from Marshall's famous dictum was brushed away by one stroke of Mr. Justice Holmes' pen, thus: "the power to tax is not the power to destroy while this Court sits" *(Reyes vs Almanzor, 196 SCRA 327)*.

Verily, taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxing payer. But since taxes are what we pay for civilized society and are the lifeblood of the nation, the law frowns against tax exemptions. Tax exemptions should be granted only by clear and unequivocal provision of law expressed in a language too plain to be mistaken. They cannot be extended by mere implication or inference *(PLDT vs City of Davao, 399 SCRA 447)*. Tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Elsewise stated, taxation is the rule, exemption therefrom is the exception *(Commissioner of Internal Revenue vs General Foods Phils, Inc, 401 SCRA 545)*.

All told, there is no error in the disquisition of judgment rendered by the court *a quo*, the same being in accord with the facts obtaining in the case and with the applicable law and jurisprudence. However, pursuant to *Section 168 of the Local Government Code of 1991*, the total interest of 2% per month on the unpaid taxes shall not exceed thirty-six (36) months.

WHEREFORE, the foregoing considered, the present petition is hereby **DISMISSED**. The decision dated November 25, 2004 of the RTC of La Trinidad, Benguet, Branch 62, in Civil Case No. 01-CV-1652 is hereby **AFFIRMED** with the **MODIFICATION** that the total interest of 2% per month on the unpaid taxes shall not exceed thirty six (36) months. No costs.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice