REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

SAN MIGUEL FOODS, INC.,
Petitioner,

-*versus*-

OFFICE OF THE CITY TREASURER, CITY OF DAVAO, represented by BELLA LINDA N. TANJILI, City Treasurer,
Respondent.

CTA AC No. 209

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

MAY 29 2020 ; 1:30 P.M.

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D E C I S I O N

MANAHAN, *J.*:

This case involves the *Petition for Review*[1] filed by Petitioner San Miguel Foods, Inc. (SMFI) against respondent Office of the City Treasurer (OCT) – Davao City pursuant to Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the review and reversal of the Regional Trial Court's (RTC) – Branch 16, Davao City *Joint Decision* dated June 19, 2018[2] and *Order* dated July 19, 2018[3], and the refund of the Permit Fee to Slaughter amounting to ₱625,023.30 which it paid under protest.

THE PARTIES

Petitioner SMFI is a corporation organized and existing by virtue of Philippines laws, with principal office at The JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City. It has a branch in Davao City located at 3rd Floor Alpha Bldg., Lanang Business Park, Lanang, Davao City.[4]

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[1] Docket, CTA AC No. 209, pp. 8-21.
[2] *Id.*, pp. 30-43.
[3] *Id.*, p. 44.
[4] *Id.*, Memorandum (For Petitioner SMFI), p. 91.

Respondent OCT, which is represented by City Treasurer Bella Linda N. Tanjili, is located at the Ground floor of the Davao City Hall, City Hall Drive, Davao City.[5]

THE FACTS

Petitioner SMFI is engaged in poultry operations, livestock farming, processing and selling of meat products, manufacturing and marketing of feed products, selling and distribution of food products, and franchising operations.[6]

Petitioner SMFI also operates two dressing plants in Davao City, namely, the Toril Dressing Plant and the Tugbok Dressing Plant, which are subject to the payment of local business taxes.[7]

In the course of its operation, live birds/poultry products are slaughtered in said dressing plants which are additionally subject to the payment of the necessary ante and post mortem fees pursuant to Section 367(d)[8] of the Revenue Code of Davao City.[9]

Between July and August of 2016, petitioner through its dressing plants was assessed by respondent OCT with the corresponding permit fees on the slaughtering of live birds/poultry products for the months of June and July 2016 amounting to ₱156,234.30.[10] Thus, petitioner filed a written letter protest dated September 1, 2016.[11]

Respondent OCT denied said protest through its letter dated December 29, 2016, hence, petitioner SMFI filed an appeal before RTC-Branch 16 which was docketed as R-DVO-

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[5] Docket, Memorandum (For Petitioner SMFI), p. 91.
[6] *Id.* at 92.
[7] *Id.*
[8] SECTION 367. Imposition of Fees. — There shall be imposed the following:
xxx xxx xxx
(d) Ante-Mortem and Post-Mortem Fees. — There is hereby collected ante-mortem and post-mortem fees for the slaughter of animals in City operated slaughterhouses or those authorized by the City Government, as follows:
xx xxx xxx
[9] Docket, Memorandum (For Petitioner SMFI), p. 92.
[10] *Id.*
[11] *Id.*

17-00405-CV. Said court through its Order dated September 15, 2017 dismissed the appeal subsequently.[12]

Petitioner moved for its reconsideration and prayed for a definitive interpretation of Section 367(a)[13] of said Revenue Code. The motion was denied outrightly under the Court Order dated October 30, 2017 for failure to contain a notice of hearing in violation of Sections 4 and 5, Rule 15 of the Revised Rules of Court.[14]

On December 11, 2017 petitioner filed a Petition for Relief from the RTC's Orders dated September 15, 2017 and October 30, 2017 which was docketed as R-DVO-17-05274-CV.[15]

While the case was on-going, petitioner still received several assessments of permit fees for its slaughtering of live birds/poultry products for the months of June, July, August and September 2017 which it duly protested. However, the respondent failed to act on them. Thus, petitioner filed another appeal with RTC-Branch 16. The cases were subsequently consolidated.[16] Petitioner paid such assessments under protest because its Mayor's Permit would not be issued.[17]

On June 19, 2018, RTC-Branch 16, Davao City through the assailed Joint Decision dismissed the petition for relief and denied all appeal. Hence, petitioner moved for its reconsideration but the court denied anew said motion under the assailed Order dated July 19, 2018.[18] The latter Order was received by petitioner on July 25, 2018. On August 23, 2018, petitioner filed the instant petition for review.

On August 31, 2018, this Court directed respondent to file its comment on the instant petition.[19] Respondent filed its

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[12] *Id.* at 93.
[13] SECTION 367. *Imposition of Fees.* — There shall be imposed the following:
(a) *Slaughterhouse Fee.* — There shall be collected fees for the slaughter of animals and the use of corrals in accordance with the provisions of this article at the slaughterhouse operated by the City Government.
[14] Docket, Memorandum (For Petitioner SMFI), pp. 93-94.
[15] *Id.* at 94.
[16] *Id.* at 94-95.
[17] *Id.* at 95.
[18] *Id.* at 96.
[19] *Id.*, Resolution dated August 31, 2018, p. 51.

comment[20] on September 28, 2018 through registered mail and received by this Court on October 11, 2018.

Petitioner then filed a Reply[21] on said Comment on October 3, 2018 through registered mail and received by this Court on October 11, 2018. Giving due course on the instant petition, this Court directed the parties to submit their respective memoranda.[22]

Respondent filed its Memorandum[23] on December 12, 2018 through registered mail and received by this Court on January 3, 2019 while petitioner filed its Memorandum[24] on December 19, 2018 through registered mail and received by this Court on January 9, 2019.

On January 17, 2019, the case was held in abeyance because the records of the case in the RTC-Branch 16, Davao City were not yet transmitted.[25]

Said records of the case were eventually transmitted to this Court, hence, the case was deemed submitted for resolution.[26]

ISSUE

The issues raised by petitioner SMFI for resolution of this Court are as follows:

1. Whether the RTC-Branch 16, Davao City erred in dismissing petitioner's Motion for Reconsideration (MR) due to the absence of notice of hearing therein; and

2. Whether petitioner SMFI's permit to operate dressing plants includes the permit to slaughter animals therein.

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[20] Docket, Comment (to the Petition for Review dated August 22, 2018), pp. 54-68.
[21] *Id.*, Reply (to Respondent's Comment on the Petition), pp. 65-71.
[22] *Id.*, Resolution dated October 25, 2018, pp. 75-76.
[23] *Id.*, Memorandum, pp. 77-86.
[24] *Id.*, Memorandum (For Petitioner SMFI), pp. 89-109.
[25] *Id.*, Resolution dated January 17, 2019, p. 117.
[26] *Id.*, Resolution dated March 28, 2019, p. 122-123.

Petitioner's Arguments[27]

Petitioner SMFI argues that the absence of the notice of hearing in its MR was excusable and not a dismissible ground, hence, the lower court should have resolved the case on its merits and not on technicalities.

Petitioner also avers that the Permit Fee to Slaughter is a fee for the regulation of the slaughter of the animals and therefore a direct duplication of the ante and post mortem fees.

Petitioner further argues that the issuance by respondent of the mayor's permit presupposed that it fully paid the fees to operate the slaughterhouse and the business taxes incidental to its operation.

Respondent's Counter-Arguments[28]

Respondent argues that RTC-Branch 16, Davao City had correctly ruled that the absence of notice of hearing is fatal to petitioner SMFI's motion for reconsideration.

Respondent further argues that when petitioner SMFI was authorized to operate a private slaughterhouse, the latter subjected itself to whatever fees, regulatory or otherwise that may be imposed by law or ordinance of said local government unit and that there is a difference between "Permit Fee to Slaughter" and the "Slaughter Fee", hence, there is no double taxation.

RULING OF THE COURT

This Court has no jurisdiction over the Petition for Review.

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[29] The jurisdiction of the CTA regarding local tax cases is provided under Section 7(a)(3) of Republic

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[27] *Supra.*, Note 20.
[28] *Supra.*, Note 19.
[29] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction;" (*Emphasis supplied*)

In the instant case, the bone of contention of the parties' arguments is the interpretation of "Permit Fee to Slaughter" under Section 367(a) in relation to the "ante and post mortem fees" imposed under Section 367 (d), both of Article Twelve – Slaughter and Corral Fees, Chapter 5 of Davao City Ordinance No. 158-05 dated November 16, 2005, otherwise known as "The 2005 Revenue Code of the City of Davao". Although the ordinance is couched as "The 2005 Revenue Code of the City of Davao", the revenue item involved in this case, i.e., Permit Fee to Slaughter, is a regulatory fee, just like the ante and post mortem fees, which are imposed for the slaughter of animals. Thus, petitioner argues that both are direct duplicates and therefore constitutive of double taxation.

On the contrary, there is no double taxation involved here since there are no taxes to speak of in the first place. Regulatory fees and local taxes are two different exactions of the local governments in the exercise of their police power and taxing power, respectively. While fees are primarily regulatory, taxes are generally revenue-raising. As held in the case of *Ferrer, Jr. v. City Mayor Bautista, et. al.*[30] , a "Fee" means a charged fixed by law or ordinance for the regulation or inspection of a business or activity. In the instant case, the activity being regulated is the slaughter of animals.

Thus, the Court has no jurisdiction over the appealed case. In *Smart Communications, Inc. v. Municipality of Malvar, Batangas*[31], the Supreme Court ruled that if the purpose of an ordinance is to regulate and not primarily to raise revenues,

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[30] G.R. No. 210551, June 30, 2015.
[31] G.R. No. 204429, February 18, 2014.

the corresponding fee imposed is not classified as local tax, to wit:

> Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals. Section 7, paragraph (a), sub-paragraph (3) of the law vests the CTA with the exclusive appellate jurisdiction over "decisions, orders or resolutions of the Regional Trial Courts in local **tax** cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."
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> The question now is whether the trial court resolved a local tax case in order to fall within the ambit of the CTA's appellate jurisdiction This question, in turn, depends ultimately on whether the fees imposed under Ordinance No. 18 are in fact taxes.
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> xxx xxx xxx
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> Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included "cell sites" or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[32]

Having established the lack of jurisdiction of this Court on the subject matter of this case, there is no further need to discuss the other issues raised by the petitioner.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

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[32] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue,* G.R. No. 185666, February 4, 2015.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice