REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MARIETTA A. BONDAD In her capacity as Municipal Treasurer of the Municipality of Mankayan, Benguet and DONALD DAGANOS, in his capacity as Municipal Assessor of the Municipality of Mankayan, Benguet,
Petitioners,

- versus -

LEPANTO CONSOLIDATED MINING COMPANY,
Respondent.

CTA AC NO. 107

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 04 2014
2:00 p.m.

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DECISION

BAUTISTA, J.:

This is an appeal, by way of Petition for Review dated May 27, 2013,[1] filed by petitioners, Marietta A. Bondad, in her capacity as Muncipal Treasurer of the Municipality of Mankayan, Benguet, and Donald Daganos, in his capacity as Municipal Assessor of the same municipality, which seeks the reversal of the Decision[2] dated March 4, 2013 and the Order[3] dated April 22, 2013 rendered by Branch 64 of the Regional Trial Court (RTC) of Abatan, Buguias, Benguet, in Civil Case No. 6412-CV-141 entitled "*Lepanto Consolidated Mining Company vs. Marietta A. Bondad, in her capacity as Municipal Treasurer, of the Municipality of Mankayan, and Donald Daganos, in his capacity as the Municipal Assessor of the Municipality of Mankayan, Benguet.*"

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[1] *Records*, pp. 6—26, with Annexes.
[2] *Id.*, pp. 17-23, Annex "A."
[3] *Id.*, p. 24, Annex "B."

The petitioners also pray that the Court declares respondent, Lepanto Consolidated Mining Company ("Lepanto"), not entitled to the preferential tax rate of 50% prescribed in Section 143 of the Local Government Code ("LGC").

THE PARTIES[4]

Petitioners are Marietta A. Bondad and Donald Daganos. They are both of legal age, married, Filipino, and resident of Mankayan, Benguet. The former is the incumbent Municipal Treasurer of the Municipality of Mankayan, Benguet, while the latter is the incumbent Municipal Assessor of the Municipality of Mankayan, Benguet. They can be served summons and other court processes at the Mankayan Municipal Hall, Mankayan, Benguet.

Respondent Lepanto is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Lepanto, Mankayan, Benguet, where notices and processes may be served.

FACTS OF THE CASE

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

On December 26, 2011, respondent[5] received a Final Assessment on its business tax for the year 2011 in the amount of Php3,899,516.84.[6]

On January 5, 2012, respondent filed its Letter-Protest,[7] explaining the basis and categories of its computation, and praying for the condonation of the surcharges and interest on its business tax for the year 2011.

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[4] *Id.*, p. 72.
[4] *Id.*
[5] Respondent Lepanto was the petitioner in the RTC case docketed as RTC Civil No. 6412-CV-141
[6] *RTC Records*, Annex "A,"pp. 15-17; Summary of Admitted Facts and Stipulation of Facts, p. 83.
[7] *Id.*, Annex "B,"pp. 18-19.

On February 28, 2012, petitioner sent an assessment letter[8] dated February 10, 2012, assessing respondent the amount of Php2,490,988.93 representing its deficiency business tax for the year 2012.

On March 6, 2012, respondent filed a Letter-Protest[9] for the deficiency business tax assessment for the year 2012, and made the corresponding payments for the deficiency business tax for the year 2011[10] and 2012[11] in the estimated total amount of Php382,135.54.[12]

Having considered the letter dated February 28, 2012[13] as a denial of its claim, respondent filed a Petition[14] on March 28, 2012 with the Regional Trial Court of Abatan, Buguias, Benguet, Branch 64, interposing the defense that it is entitled to the preferential rate of 50% as prescribed in Section 143(c) of the LGC, being an exporter.

On May 16, 2012, petitioners filed their Answer[15] stating the following Special Affirmative Defense, to wit:

> "6. The case at bar pertains to the claim of the petitioner (herein respondent) - Lepanto that it should pay the local business tax to respondent (herein petitioners) Mankayan 50% of the tax rate as contained in Sec. 143(c) of the Local Government Code. Petitioner (herein respondent) – Lepanto claims as stated in paragraph 26 and 27 of their PETITION the following:
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> *26. If the intention of the Local Government Code were to limit the application of the preferential rate for exporters to only exporters of essential commodities, then there should have been no comma after the word 'exporters,' nor*

[8] *Id.*, Annex "C," pp. 20-22.
[9] *Id.*, Annex "D," pp. 23-26.
[10] Php174,553.13 at p. 24.
[11] Php207,582.41 at p. 24.
[12] *Id.*, p. 24.
[13] *Id.*, Annex "C," pp. 20-22.
[14] *Id.*, pp. 27-48, with Annexes.
[15] *Id.*, pp. 55-61.

the word 'and' before the words 'on manufacturers' and Sec. 143(c) would have read: 'exporters, manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities.'

27. But Section 143(c) is structured differently, evidently indicating, that the preferential rate applies to 2 groups: (i) to exporters; and (ii) to those dealing in essential commodities;'

7. The above interpretation of petitioner (herein respondent) – Lepanto is misplaced. The maxim, *UBI LEX NON DISTINGUIT, NEC NOS DISTINGUERE DEBEMUS,* is well-recognized rule which means that where the law does not distinguish, courts should not distinguish;

8. The provision of Section 143(c) of the Local Government Code is very clear and it does not need any other interpretation. By reading the said section below, it is clear that it talks only of one subject matter which is ESSENTIAL COMMODITIES, to wit:

Section 143:

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
(3) Cooling oil and cooling gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

9. In page 300 of the book of RUBEN E. AGPALO entitled, STATUTORY CONSTRUCTION (6th Edition, 2009), he discussed the conjunction word – **and'** . He wrote, 'the word 'and' is a conjunction pertinently defined as meaning 'together with,' 'joined with,' 'along or together with,' 'added to or linked to,' 'used to conjoin word with word, phrase with phrase, clause with clause. The word 'and' does not mean 'or'; it is a conjunction used to denote a joiner or union, 'binding together,' 'relating the one to the other.'';

10. The word 'and' is different with the word 'or'. In page 299 of the above entitled book, author Ruben E. Agpalo wrote: 'The word 'or' is a disjunctive term signifying disassociation and independence of one thing from each of the other thins enumerated.';

11. If indeed Sec. 143 (c) of the Local Government Code pertains of 2 *groups*: *(i) to exporters; and (ii) to those dealing in essential commodities* as claimed by the petitioner (herein respondent) – Lepanto, then the law should read: 'On exporters, **or** on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities....' In this case, the word '**or'** operates to disassociates 'On exporters' on one hand and 'on manufacturers, millers, producers, wholesalers, distributors,

dealers or retailers of essential commodities' on the other hand;

12. But the law as it is now, used the word 'and.' The word 'and' operates to link, add or join 'On exporter' and' on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers.' Simply stated, the preferential tax rate as contained in Section 143 (c) pertains to (i) On exporters of essential commodities and (ii) on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities;

13. As petitioner (herein respondent) - Lepanto is not an exporter of essential commodities, it does not enjoy the preferential tax rate granted by Section 143 (c);

14. Further, in cases of doubt, but none exist in the case at bar, the Local Government Code nonetheless provides for the following:

SEC. 5 *Rules of Interpretation.* - In the interpretation of the provisions of this Code, the following rules shall apply:

(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;

(b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. **<u>Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed</u>**

> **strictly against the person claiming it**. Underscore us.
>
> 15. Section 143 (c) of the Local Government Code is a relief granted by law and thus must be strictly construed against the person claiming it and in the present case, it should be construed strictly against petitioner (herein respondent - Lepanto."

A Pre-trial Conference ensued. In an Order[16] dated October 24, 2012, the RTC allowed the resetting of the pre-trial in order to give the parties the time to extra-judicially settle the case. However an amicable settlement was not made, thus the RTC required both parties to file their respective Briefs.

Respondent filed its "Petitioner's Brief"[17] on January 31, 2013, while petitioners filed their "Appellee's Brief (For the Respondents)[18] on February 7, 2013.

On March 4, 2013, the RTC promulgated a Decision,[19] the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, this Court rules that the Petitioner (herein respondent) is entitled to the preferential tax rate of 50% prescribed under Section 143(c) of the Local Government Code, as an exporter of gold, copper and silver. Consequently, the final Assessment of Business Tax for Lepanto dated December 23, 2011 issued by the Respondents (herein petitioners), is hereby set aside and be corrected accordingly.
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> **SO ORDERED**."

On April 2, 2013, petitioners filed their "Motion for Reconsideration,"[20] while respondent filed its

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[16] *Id.*, p. 98.
[17] *Id.*, pp. 137-166, with Annexes.
[18] *Id.*, pp. 167-174.
[19] *Id.*, pp. 175-187.
[20] *Id.*, pp. 188-194.

"Comment/Opposition to Respondents'[21] Motion for Reconsideration,"[22] on April 18, 2013.

On April 22, 2013, an Order[23] was promulgated by the RTC, denying petitioners Motion for Reconsideration, dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the Motion for Reconsideration filed by the Respondents[24] is hereby denied, for lack of merit.
>
> **SO ORDERED**."

Dissatisfied, petitioners filed the present Petition for Review by registered mail on May 27, 2013.

On July 25, 2013, respondent filed its "Motion to Admit [Comment on the Petition for Review dated 24 May 2013]."[25]

In a Resolution promulgated on July 30, 2013, the Court ordered the parties to file their respective memoranda within thirty (30) days from receipt of the notice.

Respondent filed its Memorandum[26] on August 30, 2013 while petitioners filed by registered mail their Memorandum[27] on September 5, 2013. Thus, the case was considered submitted for decision as per Resolution[28] dated November 19, 2013.

Hence, this Decision

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[21] see Note 21.
[22] *RTC Records*, pp.196-201.
[23] *Id.*, 208.
[24] now herein Petitioners
[25] *Id.*, pp. 36-50.
[26] *Id.*, pp. 54-91, with Annexes.
[27] *Id.*, pp. 92-99.
[28] *Records*, p. 112.

ISSUE

The parties, in their respective pleadings raised the lone issue[29] for the Court's consideration, to wit:

> "WHETHER OR NOT LEPANTO IS ENTITLED TO THE TAX RATE OF 50% PURSUANT TO SECTION 143 (c) OF THE LOCAL GOVERNMENT CODE."

RULING OF THE COURT

We find no merit in the Petition for Review.

Petitioners Arguments

Petitioners argue that the preferential tax rate of 50% contained in Section 143(c) of the LGC is limited only to exporters of essential commodities.[30] To bolster its claim, petitioner cites the Supreme Court in the case of *Petron Corporation vs. Mayor Tobias M. Tiangco, et. Al.,*[31] wherein the preferential tax rate of 50% provided in Section 143 of LGC applies to those engaged in the exports of essential commodities.[32]

Petitioners also argue that the enumeration of those entitled to the preferential rate of 50% is conjoined with the word "and," therefore the rate applies to exporters of commodities and not to exporters per se. And that in case of doubt, tax exemption, incentive or relief granted by any local government unit shall be construed strictly against the person claiming it, as taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure.

Respondent Counter-Arguments

Respondent states that the exporters referred to in Section 143(c) of the LGC is a class of its own and is separate from the

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[29] *Records*, p. 8 and p. 39.
[30] *Id.*, pp. 8-13.
[31] G.R. No. 158881, April 16, 2008, 551 SCRA 484.
[32] *Records*, pp. 9-10.

other class namely the "manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities," as the exporters is followed by a comma and the word "and on," which clearly denotes distinction. Furthermore, that under the Doctrine of Last Antecedent, a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows. Therefore, the word exporters under Section 143 of the LGC cannot be qualified by the word "of essential commodities," as the latter phrase is not immediate to the word exporters. Respondent claims that it can be inferred from the deliberations of the Bicameral Conference of the Legislature that preferential tax rate of 50% in Section 143(c) of the LGC is intended for exporters in general.

Respondent also states that the Supreme Court Decision in *Petron Corporation vs. Mayor Tobias M. Tiangco, et. Al.*,[33] hinges on the correct interpretation of Section 133 (h) of the LGC on excise taxes, and not on Section 143 of the LGC, and that there is no doubt as to the interpretation of Section 143 of the LGC, therefore the law should be applied.

In the eyes of the Court, this case involves the question of whether or not the term "exporters" in Section 143(c) of the LGC is limited by the phrase "essential commodities" as the term exporters is followed by the conjunctive words "and on."

For a clearer appreciation of the law, the aforesaid provision is hereby quoted, to wit:

> SEC. 143. *Tax on Business* - The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

[33] G.R. No. 158881, April 16, 2008, 551 SCRA 484.

In the Implementing Rules and Regulations of the LGC, Article 233(c),[34] the term exporters is defined as follows:

> "Article 233. *Tax on Business.* Xxx
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed in paragraphs (a), (b) and (d) of this Article:
>
> xxx xxx xxx
>
> For purposes of this Article, the term exporters shall refer to those who are principally engaged in the business of exporting goods and merchandise, as well as manufacturers and producers whose goods or products are both sold domestically and abroad. The amount of export sales shall be excluded from the total sales and shall be subject to the rates not exceeding one half (1/2) of the rates prescribed under paragraphs (a), (b) and (d) of this Article." (Emphasis Supplied)

Likewise, in the Model Local Government Revenue Code, which serves as a guide in the formation and creation of the LGC, it referred exportation to all kinds of goods and merchandise, to wit:

> "13. On Exporters [Section 2M.02 (c)]
>
> The various essential products enumerated under Section 2M.02(c) applies only to manufacturers, millers, producers, wholesalers distributors, dealers or retailers of said products. Exporters who are mentioned in the section refer to persons who are principally engaged in the exportation of all kinds of goods and merchandise.

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34 Rules and Regulations, Implementing The Local Govenrment Code of 1991.

> In the case of manufacturers, assemblers, processors and other business enumerated in the aforecited section of the model who are also exporters the export sales shall be segregated from the total sales and shall be subject to a tax not exceeding 1/2 of the rate prescribed for manufacturers, assemblers, etc. In Section 2M.02 (a) of the model. The export sales of businesses enumerated under Section 2M.02 (b) of the model, e.g., wholesalers, distributors, etc., who are also engaged in the exportation of goods and merchandise, shall likewise be subject to a tax not exceeding one-half (1/2) of the rates prescribed in the said section." (Emphasis Supplied).

Clearly from the foregoing, the term exporter in Section 143(c) of the LGC is not limited to essential commodities.

In the present case, respondent is an exporter of minerals. As the term exporters in the aforesaid law[35] are not limited by the phrase "essential commodities," as clarified by the Implementing Rules of the LGC and the Model Local Government Revenue Code, respondent is therefore entitled to the preferential rate of 50% stated in Section 143(c) of the LGC.

Thus, the Court is in agreement with the Decision[36] of the Regional Trial Court which construed Section 143(c) of the LGC, as follows:

> "xxx The word 'on exporters' is not linked or included in the qualifying/limiting phrase 'of essential commodities.' The conjunction word 'AND' joins the word 'on exporters' with the phrase 'on manufacturers, millers, producers, wholesalers, distributors, dealers,' not with the limiting phrase 'of essential commodities' but joins them in the qualifying phrase 'at the rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b), and (d) of this Section,' which is the application of tax rate. The word 'AND' indicates or conjoins two (2)

[35] Section 143(c) of the Local Government Code.
[36] *Records*, pp. 20-23.

types of taxpayer entitled or enjoying the same tax rate."

With that, the Petition for Review must fail. Respondent is entitled to the preferential tax rate of 50% prescribed by Section 143(c) of the LGC to exporters.

WHEREFORE, finding no reversible error in the Assailed Decision dated March 4, 2013, and the Assailed Order dated April 22, 2013, both rendered by the Regional Trial Court (RTC), Branch 64, of Abatan, Buguias, Benguet, the same are both hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice