**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**THE CITY OF MAKATI AND NELIA A. BARLIS, IN HER CAPACITY AS THE CITY TREASURER OF MAKATI CITY,**
Petitioners,

- versus -

**TRANS-ASIA POWER GENERATION CORPORATION,**
Respondent.

**CTA AC NO. 144**
*(Civil Case No. 10-312)*

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**CASANOVA,** *JJ.*

Promulgated:

DEC 02 2016

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1:05 p.m.

# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For the Court's resolution is petitioners' **Motion for Reconsideration (of the Decision dated 29 July 2016)**, filed on August 15, 2016, with respondent's **Comment/Opposition (Re: Motion for Reconsideration dated 15 August 2016)**, filed on September 2, 2016.

Petitioners move for the reconsideration of the Decision[1] promulgated on July 29, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

[1] Docket, pp. 165-178.

Accordingly, the Decision dated February 18, 2015 and the Order dated June 9, 2015, both rendered by Branch 134 of the Regional Trial Court of Makati City in Civil Case No. 10-312 entitled 'Trans-Asia Power Generation Corporation vs. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City', are hereby **AFFIRMED**.

**SO ORDERED**."[2]

Petitioners contend that respondent is a "contractor" and not a "manufacturer" as defined under Section 131(h) and (o) of the Local Government Code (LGC) of 1991, respectively. In support of this contention, petitioners point out the following documents presented by respondent itself: (1) Certificate of Registration dated September 23, 1996 issued by the Board of Investments (BOI) showing that respondent is registered with the BOI as a New Operator of Power Generating Plant for Exclusive Supply to HI-Cement Corporation; (2) respondent's General Terms and Conditions which states that it is directed to submit reporting requirements to the Infrastructure & Service-Oriented Industries Department of the BOI; and (3) Certificate of Compliance issued by the Energy Regulatory Commission showing that respondent conducts service operations. Petitioners further claims that the categorization of the BOI on respondent as a mere "operator of power-generating plant" and not a "power-producer" would mean that respondent is a contractor of services. Consequently, respondent is covered by the application of Section 131(h) of the LGC of 1991 and Section 3A.01(q) of Makati Revenue Code and is therefore liable to pay the assailed taxes.[3]

On the other hand, respondent alleges that the present motion is a mere rehash of petitioners' arguments previously presented before this Court and the Regional Trial Court (RTC). Hence, respondent submits that the same must be denied for utter lack of merit. Respondent also contends that its classification as a "manufacturer" has already been affirmed by the Supreme Court in its Resolutions issued on January 11, 2016 and June 20, 2016 in G.R. No. 220001. Respondent argues that since G.R. No. 220001 involves the same parties and issues as in the present case, the same is clearly binding to the present case, applying the doctrine of *stare decisis et non quieta movere*, which mean "to adhere to precedents, and not to unsettle things which are established". Hence, following

[2] Docket, p. 177.
[3] Docket, pp. 179-187.

the doctrine of *stare decisis,* since the Supreme Court has already settled that respondent should be classified as "manufacturer", this Court is therefore bound to apply the said findings and principles as laid by the Supreme Court.[4]

We DENY petitioners' Motion for Reconsideration.

It is at once apparent that no new issues are raised in the present motion. The grounds relied upon are mere rehash of the arguments in their previous pleadings, all of which have been considered and exhaustively discussed in the assailed Decision dated July 29, 2016. Moreover, the pieces of evidence presented are the very same pieces of evidence previously presented by petitioners to support its claim against respondent. Be that as it may, it bears reiterating the findings of the Court in this case.

Petitioners cite the definition of "contractor" vis-à-vis the word "manufacturer" under Section 131(h) and (o) of the LGC of 1991, respectively, as follows:

> "(h) 'Contractor' includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.
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> As used in this Section, the term 'contractor' shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants, engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors

[4] Docket, pp. 190-195.

or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels, and lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers, smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

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(o) 'Manufacturer' includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption;"

Records show that respondent is primarily engaged in the business of building, constructing, erecting, owning, equipping, installing, operating, maintaining, selling, leasing power generation plants, facilities, machineries, equipment; **selling any electricity generated by such power plants**; and purchasing, importing, acquiring, owning, leasing or letting power generation, transmission, telecommunications, transportation and other kinds of equipment, materials and facilities.[5] Evidently, respondent is a generation company engaged in the production and sale of electricity.

Section 4(w) and (x) of Republic Act (RA) No. 9136 define generation company and generation of electricity, as follows:

"Section 4. *Definition of Terms.* –

xxx xxx xxx

(w) 'Generation Company' refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(x) 'Generation of Electricity' refers to the **production of electricity** by a generation company or a co-generation facility pursuant to the provisions of this Act;" (*Emphasis supplied*)

In the case of *Kuenzle & Streiff vs. The Insular Collector of Customs*[6], the Supreme Court discussed what constitutes the term "manufacture", as follows:

[5] Docket, p. 166.
[6] G.R. No. L-10710, December 11, 1915.

"xxx In order to ascertain the ordinary meaning of these words, resort may be had to the definitions given by well-recognized lexicographers. Webster, in his valuable International Dictionary, defines manufacture as — 'The operation of making wares or any product by hand, by machinery, or by other agencies; anything made from raw material, by the hands, by machinery, or by art, as clothes, iron utensils, shoes, machinery, saddlery, etc.' Black, in his valuable Law Dictionary, defines manufacture as — 'Any useful product made directly by human labor, or by the aid of machinery directed or controlled by human power, and **either from raw materials or from materials worked up into a new form**. Also the process by which such products are made or fashioned.' Bouvier, in his Law Dictionary, defines manufacture — 'To make or fabricate raw materials by hand or by machinery, worked into forms convenient for use;' and, when used as a noun, 'anything made from raw materials by hand or by machinery or by art. Making fish lines, ropes, etc. from raw materials is a manufacture, as is also the making of cordage, rope and twine. Cutting ice and storing it in a building is not.' xxx" (*Emphasis supplied*)

On the other hand, in the case of *Concrete Aggregates, Inc. vs. Court of Tax Appeals, et al.*[7], the Supreme Court defined what is "contractor", as follows:

"We have had the occasion to construe Section 191, now Section 205, of the Tax Code in *Commissioner of Internal Revenue vs. The Court of Tax Appeals, et al.* where we reiterated the test as to when one may be considered a contractor within its context, thus;

The word 'contractor' has come to be used with special reference to a person who, in the pursuit of the independent business, undertakes to do a *specific job or piece of work* for other persons, using his own means and methods without submitting himself to control as to the petty details. (Aranas, Annotations and Jurisprudence on the National Internal Revenue Code, p. 318, par.

[7] G.R. No. 55793, May 18, 1990.

> 191(2), 1970 Ed.) The true test of a contractor as was held in the cases of *Luzon Stevedoring Co. vs. Trinidad,* 43 Phil. 803, 807-808, and *La Carlota Sugar Central vs. Trinidad,* 43 Phil. 816, 819, would seem to be that he *renders service in the course of an independent occupation,* representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished. xxx"

In the assailed Decision, the Court discussed the procedure or process on how respondent makes or produces electricity to ultimately sell the same to its end-user, as follows:

> "xxx A careful perusal of the records would show that respondent accumulates bunker fuel as its raw material; that the said bunker fuel is fed into the diesel engine and is ignited by activating the diesel engine; that by activating the engine, the bunker fuel is converted into electricity by means of a chemical process referred to as combustion, thereby preparing the electricity for any specific uses of industry; and that the electricity produced was sold to Holcim Philippines Inc. and the excess electricity was sold to the Wholesale Electricity Spot Market (WESM), which certainly, is not for respondent's own use or consumption. Also, without the chemical process of combustion, the bunker fuel could not, in their original form, perform the uses of electricity. xxx"[8]

Guided by the foregoing definitions, it is clear that the nature of respondent's business falls within the scope of the definition of a "manufacturer". Nowhere in the above definition indicates that respondent is a "contractor" whose activity consists essentially of the sale of all kinds of services. Respondent is definitely a "manufacturer" engaged in the production and sale of electricity to its end-user.

"It is a basic rule of interpretation that words and phrases used in the statute, in the absence of a clear legislative intent to the contrary, should be given their plain, ordinary and common usage or

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[8] Docket, p. 174.

meaning."[9] "The 'plain meaning rule' or *verba legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."[10]

Furthermore, following the principle of *ejusdem generis* which states that "[w]here general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are held to be as applying only to persons or things of the same kind or class as those specifically mentioned"[11], respondent's business actually falls within the scope of "manufacturer". This is also discussed by the Court in the assailed Decision, quoting the RTC's Decision, as follows:

> "A careful analysis of the nature of plaintiff's business in line with the abovestated definition of manufacturer/producer and contractor and the enumeration of persons and things that follows after each definition show that plaintiff's business operation falls within the scope of manufacturer/producer and while defendant pressed that plaintiff's business is covered and included under the word 'other co', the Court disagrees. Under the principle of ejusdem generis, where general words follow [the] enumeration of person or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned (PNOC Shipping and Transport Corporation vs. Court of Appeals, 297 SCRA, 402,422 citing Republic vs. Migrino 189 SCRA 289). Thus, in determining the meaning of the phrase 'other co.' one

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[9] *Commissioner of Internal Revenue vs. The Court of Appeals, et al.*, G.R. No. 107135, February 23, 1999.

[10] *Republic of the Philippines vs. Lacap*, G.R. No. 158253, March 2, 2007.

[11] *Caltex Philippines, Inc. vs. The Honorable Commission on Audit, et al.*, G.R. No. 92585, May 8, 1992.

> must refer to prior enumeration of what 'contractor' or kinds of services must it include. Going over the enumeration given under the term 'contractor', it is clear that plaintiff's business does not fall under such category but rather under the category of 'manufacturer/producer'."[12]

In the case of *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*[13], the Supreme Court ruled that a tax cannot be imposed without clear and express words for that purpose, as follows:

> "What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws."

Petitioners' presentation of the Certificate of Registration dated September 23, 1996 issued by the BOI and respondent's general terms and conditions do not, in any way, support petitioners' contention that respondent is a "contractor" and not a "manufacturer". As held by the Court in the assailed Decision, the said documents only prove the fact of respondent's registration with the BOI and that it is required to report to BOI. Also, the categorization of the BOI on respondent as a mere "operator of power-generating plant" and not a "power-producer" is not determinative of real nature of respondent's business. ge

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[12] Docket, p. 175.
[13] G.R. Nos. 167274-75, July 21, 2008.

Notably, petitioners' Motion for Reconsideration lacks merit as it merely reiterates the grounds that had already been passed upon in the assailed Decision. In the case of *Shangri-La International Hotel Management, Ltd., et al. vs. Developers Group of Companies, Inc.*[14], the Supreme Court denied respondent's Motion for Reconsideration for being a mere reiteration of their previous arguments and for failure to raise matters substantially plausible or compellingly persuasive to warrant the reversal of the assailed Decision, as follows:

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

As can be seen, petitioners' Motion for Reconsideration does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought. Hence, the Court finds no compelling reason to reverse the ruling of the Court in the Decision dated July 29, 2016.

**WHEREFORE**, in view of the foregoing, petitioners' **Motion for Reconsideration (of the Decision dated 29 July 2016)** is **DENIED** for lack of merit.

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

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

I CONCUR:

**CAESAR A. CASANOVA**
Associate Justice