REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,
Petitioners,

– *versus* –

TRANS-ASIA POWER GENERATION CORPORATION,
Respondent.

CTA *EB* NO. 1570
(CTA AC No. 144)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JUN 13 2018 2:35 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is petitioners' Motion for Reconsideration (Re: Decision dated 21 March 2018) (the "Motion for Reconsideration") filed on April 13, 2018 with respondent's Comment on/Opposition to (Re: Petitioner's Motion for Reconsideration dated 16 April 2018) with Manifestation (the "Comment/Opposition") filed on April 20, 2018.

On March 21, 2018, the Court *En Banc* promulgated a Decision[1] (the "Assailed Decision") denying the Petition for Review and

[1] *Rollo, CTA EB No. 1570, Decision,* pp. 123-134.

affirming the Decision[2] promulgated on July 29, 2016 and the Resolution[3] issued on December 2, 2016 by the Court of Tax Appeals Second Division (the "Court in Division"), which in turn affirmed the Decision[4] promulgated on February 18, 2015 and the Order[5] issued on June 9, 2015 by the Regional Trial Court of Makati City, Branch 134 ("RTC") in the case entitled *Trans-Asia Power Generation Corporation v. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City*[6] granting the tax protest filed by respondent Trans-Asia Power Generation Corporation ("TAPGC") and cancelling and withdrawing the Notice of Assessment dated October 27, 2009 in the amount of Php686,300.53 representing deficiency taxes, fees, and charges for calendar years ("CYs") 2005 to 2007[7]. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on July 29, 2016 and the Resolution promulgated on December 2, 2016 by the Second Division are hereby **AFFIRMED**.
>
> **SO ORDERED**.

In the present Motion, petitioners pray for the reconsideration and setting aside of the Assailed Decision and in support thereof argue that petitioners were correct to have changed the business classification of respondent from Producer/Manufacturer to Contractor/Services, and therefore the Notice of Assessment dated October 27, 2009 was legal and valid.

On the other hand, respondent counters that: *(1)* petitioners' Motion for Reconsideration is a mere *pro forma* motion which should not toll the reglementary period for appeal and should thus be dismissed; *(2)* petitioners' Motion for Reconsideration has no basis in fact and in law; *(3)* petitioners are bound by the doctrine of *stare decisis;* and *(4)* respondent has filed a Motion for Execution in Civil Case No. 06-880[8].

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[2] *Rollo, Petition for Review ("PFR"), Annex "A," Division Decision,* pp. 25-38; penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas concurring.
[3] *Rollo, PFR, Annex "B," Division Resolution,* pp. 40-50.
[4] *Records, CTA AC No. 144, PFR, Annex "B," RTC Decision,* pp. 34-41; penned by Presiding Judge Perpetua Atal-Paño.
[5] *Records, PFR, Annex "D," RTC Order,* p. 50.
[6] Docketed as Civil Case No. 10-312.
[7] *Records, PFR, Annex "B," RTC Decision,* p. 41.
[8] CTA AC No. 87, CTA *EB* No. 1086, and G.R. No. 220001.

After a careful review of the ground raised in the Motion for Reconsideration as well as the counter-arguments raised in the Comment/Opposition, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision. Petitioners failed to raise any new or substantial matter, or any compelling reason to justify the reversal or modification of the Court *En Banc*'s findings in the Assailed Decision. Consequently, the Court *En Banc* finds petitioners' Motion for Reconsideration devoid of merit. Nevertheless, the Court *En Banc* will expound on the arguments raised by the parties to reinforce the discussion in the Assailed Decision.

Section 129 of the Local Government Code of 1991, as amended (the "1991 LGC")[9] provides that local government units ("LGUs") shall have the power to create their own sources of revenue and to levy taxes, fees, and charges. In the exercise of the taxing power of LGUs, *Section 143 of the 1991 LGC* enumerates the businesses which may be subject to local business tax ("LBT") by the relevant LGU (*e.g.*, manufacturers, wholesalers, exporters, contractors, banks, peddlers other businesses). In determining whether a business should fall under a specific classification, *Section 131 of the 1991 LGC* defines each business subject to LBT.

As applied to TAPGC, the issue in the present case precisely revolves on TAPGC's proper classification – *i.e.*, whether it is a contractor as alleged by petitioners or a manufacturer as argued by TAPGC. Taking into consideration the definitions provided under *Section 131 of the 1991 LGC*, the Court *En Banc* reiterates the simplified definition of both business as stated in the Assailed Decision, to wit:

> . . . a contractor is one who is not subject to professional tax and whose activity consists essentially of the sale of services for a fee, and a manufacturer is one who, through a physical or chemical process, alters or combines a raw material for the purpose of sale or distribution to others. In both definitions, the performance of a service is essential. However, while a contractor is a more general term for any person who sells a service for a fee, a manufacturer is more specific and pertains to a person who performs the service which consists of altering or combining a raw material to develop a new product for sale or distribution to others.

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[9] An Act Providing for a Local Government Code of 1991, Republic Act No. 7160 (1991).

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To reiterate, both a contractor's business and a manufacturer's business involve the performance of services. However, a further determination of the actual business activity engaged in by the entity is necessary to determine whether the rendition of service for a fee is one that should properly classify the business as a contractor or a manufacturer.

In the present case, an examination of the real nature and actual business of TAPGC reveals that it is engaged in the manufacture of electricity. Through the process of combustion, TAPGC alters bunk fuel to create electricity which it then sells to third parties. Being in the business of manufacturing, it is then improper for petitioners to impose tax on TAPGC as a contractor simply because TAPGC performs a service for a fee.

Accordingly, for the foregoing reasons, the Court *En Banc* finds no cogent reason to disturb its findings in the Assailed Decision.

WHEREFORE, premises considered, petitioners' Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

J. C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Official Business)

CATHERINE T. MANAHAN
Associate Justice