w/ sp. co.
J.Opt

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

BATANGAS CITY, MARIA TERESA GERON In her capacity as City Treasurer of Batangas City and TEODULFO A. DEGUITO In his capacity as City Legal Officer of Batangas City,
Petitioners.

-versus-

PILIPINAS SHELL PETROLEUM CORPORATION,
Respondent.

CTA EB No. 350
(CTA AC No. 10)

Members:
ACOSTA, *P.J.*
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
JAN 2 2 2009 Apolinario 10:10 a.m.

x- -x

DECISION

CASANOVA, J:

This is an appeal, by way of Amended Petition for Review[1], filed by the petitioners-Batangas City et al., (BATANGAS CITY) from the Amended Decision[2] *(Assailed Amended Decision)* of the Court of Tax Appeals Second Division *(CTA Second Division)* dated July 31, 2007 in CTA AC No. 10 entitled, *"PILIPINAS SHELL PETROLEUM CORPORATION, petitioner vs. BATANGAS CITY, BENJAMIN E. PARGAS in his capacity as CITY TREASURER and TEODULFO A. DEGUITO in his capacity as CITY LEGAL OFFICER OF BATANGAS CITY, respondents"*, and

[1] CTA EB Rollo, pp. 308-334.
[2] Annex "14", CTA EB Rollo, pp. 288-292.

from the Resolution[3] *(Assailed Resolution)* dated November 21, 2007 denying the Motion for Reconsideration[4] of BATANGAS CITY.

The facts of the case, as culled from the records[5], are as follows:

> *"Petitioner, Pilipinas Shell Petroleum Corporation (PSPC), operates an oil refinery and depot in Tabangao, Batangas City, which manufactures and produces petroleum products that are distributed nationwide.*
>
> *On the other hand, respondent Batangas City is a local government unit (LGU) with the capacity to sue and be sued under its Charter and Section 22(a)(2) of the Local Government Code (LGC) of 1991. Respondents Teodulfo A. Deguito and Benjamin E. Pargas are the City Legal Officer and City Treasurer, respectively, of Batangas City.*
>
> *During the years that the PSPC was operating, particularly in 2002, it was only paying the amount of P98,964.71 for fees and other charges which include the amount of P1,180.34 as Mayor's Permit Fee. On February 20, 2002, respondent, Batangas City, through its City Legal Officer, sent a notice of assessment to petitioner demanding the payment of P92,373,720.50 and P312,656,253.04 as business taxes for its manufacture and distribution of petroleum products. In addition, PSPC was also required and assessed to pay the amount of P4,299,851.00 as Mayor's Permit Fee based on the gross sales of its Tabangao Refinery. The assessment was pursuant to Section 143(h) of the Local Government Code of 1991 and Section 23 of its Batangas City Tax Code of 2002.*
>
> *On the belief that respondents have no authority to impose the subject taxes and fees, petitioner filed its protest on April 17, 2002 contending among others that it is not liable for the payment of the local business tax either as manufacturer or distributor of petroleum products. It further argued that the Mayor's Permit Fees are exorbitant, confiscatory, arbitrary, unreasonable and not commensurate with the cost of issuing a license.*
>
> *On May 13, 2002, respondents denied petitioner's protest and declared that under Section 14 of the Batangas City Tax Code of 2002, they are empowered to withhold the issuance of the Mayor's Permit for failure of petitioner to pay the business taxes on its manufacture and distribution of petroleum products.*

---

[3] Annex "15", CTA EB Rollo, pp. 293-300.
[4] Annex "13", CTA EB Rollo, pp. 276-284.
[5] Annex "11", Decision, CTA EB Rollo, pp. 233-259.

Aggrieved by the decision of respondents, on June 17, 2002, petitioner then filed a Petition for Review under Section 195 of the Local Government Code of 1991 before the Regional Trial Court (RTC) of Batangas City appealing the denial by respondent of its protest.

In its Petition for Review, petitioner maintained that respondents have no authority to impose the said taxes and fees, and argued that the levy of local business taxes on the business of manufacturing and distributing gasoline and other petroleum products is contrary to law and against declared national policy. Assuming however that respondents have the power to levy local business taxes on the business of manufacturing and distributing gasoline and other petroleum products, the computation of petitioner's tax liability is erroneous. Also, the Mayor's Permit Fees levied by respondents were challenged for being unreasonable and confiscatory.

In his Answer, respondent contended that the City of Batangas can legally impose the taxes on the business of manufacturing and distribution of petroleum products, including the Mayor's Permit Fees upon petitioner.

After the preliminary conference, trial and presentation of witnesses, both parties were directed to submit their respective Memorandum. The lower court then summarized the issues raised during the course of the trial and presented in petitioner's Memorandum, thus:

> *a. Whether the Batangas City Tax Code of 2002 imposing business taxes in the form of distributor and manufacturer on Pilipinas Shell Petroleum Corporation contravenes the law, public policy and pertinent rules and regulations; and*
>
> *b. Whether or not the business tax and mayor's permit fee imposed by the Batangas City Tax Code based on the gross receipts are excessive, oppressive and unreasonable.*

The lower court deemed the issue of estoppel, raised by respondent, inapplicable and declared that petitioner merely exercised its right to the remedy provided for under Section 195 of the Local Government Code of 1991.

During the pendency of the case, petitioner paid under protest the Mayor's Permit Fees for the year 2003 amounting to P774,840.50 as manufacturer and P3,525,010.50 as distributor. When petitioner applied for the issuance of the Mayor's Permit in 2004, it offered the amount of

P150,000.00 as compromise Mayor's Permit Fee without prejudice to the outcome of the case then pending, which was rejected by respondent.

In the assailed Decision of RTC Branch II of Batangas City, penned by Judge Mario V. Lopez, petitioner's appeal was partially granted and the said court a quo declared that:

> *'**WHEREFORE**, in view of the foregoing premises, this Court hereby renders judgment as follows:*
>
> *1. The taxes on the privilege of engaging in the business of manufacturing, distribution of dealing in petroleum products in the amount of P92,373,750.50 and P312,656,253.04, respectively, imposed by Batangas City on Pilipinas Shell, is VALID.*
>
> *2. Declaring the Mayor's Permit Fee in the amount of P4,299,851.00 based on gross receipts/sales as grossly excessive and unreasonable considering the aforesaid business taxes.*
>
> ***ACCORDINGLY, THE PETITIONER, PILIPINAS SHALL PETROLEUM CORPORATION (PSPC), IS HEREBY ORDERED TO PAY THE AMOUNT OF PHP405,030,003.54 AS TAX ON ITS BUSINESS OF ENGAGING IN THE MANUFACTURE AND DISTRIBUTION OF PETROLEUM PRODUCTS, WHILE THE ASSESSMENT OF PHP4,299,851.00 AS MAYOR'S PERMIT FEE IS HEREBY ORDERED REVOKED WITHOUT PREJUDICE TO ITS MODIFICATION BY THE RESPONDENTS, BATANGAS CITY, ET AL.***
>
> ***SO ORDERED.'***

Unsatisfied with the Decision of the lower court, petitioner filed a 'Motion for Partial Reconsideration' which raised the following grounds:

> *1. This Honorable Court committed a reversible error in interpreting Section 133(h) of the Local Government Code to mean that excise taxes may be imposed only on articles or products and not on the privilege of performing an act, engaging in an occupation or enjoying a privilege.*
>
> *2. Assuming arguendo that Batangas City is legally empowered to impose and collect business taxes from PSPC, this Honorable Court committed reversible error in ordering PSPC to pay the amounts of Php92,373,720.60 and Php312,656,253.04 and thereby effectively deprive*

PSPC of the right to question the correct amount of its tax liability.

3. This Honorable Court committed a reversible error in holding that PSPC may be subjected to both manufacturer's and distributor's taxes.

4. This Honorable Court committed a reversible error in holding that the principle on strict interpretation of exemption from taxation is the paramount rule applicable in this case.

5. This Honorable Court committed reversible error in declaring Article 232(h) of the Implementing Rules and Regulations of the LGC void.

Before the issues could be resolved, petitioner filed a 'Manifestation and Motion for Partial Execution' to which respondents filed a 'Counter-Manifestation and Opposition to the Motion for Partial Execution of Decision'. On February 2, 2005, petitioner filed another 'Manifestation and Motion' praying for the refund of the Mayor's Permit Fees it paid for the taxable year 2003 in the amount of P4,299,851.00.

In the Resolution of the lower court, petitioner's Motions were denied for lack of merit.

Hence, this 'Petition for Review with Extremely Urgent Application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction' filed on April 27, 2005.

Respondent filed its 'Comment' on July 6, 2005.

Petitioner filed its 'Reply (to Respondent's June 31, 2005 Comments on the Petition for Review)' on August 3, 2005.

Considering the urgency of the resolution of petitioner's Application for the Issuance of a Writ of Preliminary Injunction, on August 11, 2005, this Court granted the said application and ordered respondent to hold in abeyance the collection of the questioned manufacturer and distributor's taxes in the amounts of P92,373,720.50 and P312,656,253.04, respectively, conditioned upon the filing by petitioner of a surety bond in the amount of P500,000,000.00 taken from a bonding company duly accredited by the Supreme Court.

> *On August 30, 2005, petitioned filed its 'Compliance' with the Court's Resolution of August 11, 2005, submitted the required surety bond issued by Malayan Insurance Co., Inc. However, in a Resolution dated September 13, 2005, this Court resolved to disapprove petitioner's surety bond for failure of petitioner to submit a Certificate containing the specimen signatures of the agents authorized to transact business with the Court as required under the Guidelines on Corporate Surety Bonds issued by the Supreme Court.*
>
> *A 'Motion for Reconsideration' was filed by petitioner on October 7, 2005. Finding merit in petitioner's manifestations, this Court, through a Resolution dated February 20, 2006, granted the said Motion, thus lifted and set aside the earlier Resolution of September 13, 2005.*
>
> *Upon the parties' filing of their Memoranda, this case was submitted for decision on July 5, 2006."*

After going over the arguments raised by both parties in their respective pleadings, the *CTA Second Division* promulgated on June 21, 2007 a Decision[6] with Justice Olga Palanca-Enriquez dissenting[7]. On July 13, 2007, PSPC filed a "Motion for Clarification"[8] praying for a re-computation of the amount of Mayor's permit Fee to be refunded by BATANGAS CITY to PSPC. On July 31, 2007, the *CTA Second Division* promulgated the *Assailed Amended Decision*[9] with Justice Olga Palanca-Enriquez maintaining her dissenting opinion, the dispositive portion of which reads as follows:

> ***"WHEREFORE**, premises considered, the judgment/order of the RTC Branch II of Batangas City is hereby **MODIFIED**. As to the business taxes on the manufacture and distribution of petroleum products, We find the petitioner not liable for the same. As to the mayor's permit, We find that it is excessive. Accordingly, the respondent is hereby a) declared **legally proscribed** from imposing business taxes on the manufacture and distribution of petroleum products; and b) **to refund** in the form of tax credit the excessive mayor's permit in the amount of **THREE MILLION EIGHT HUNDRED SEVENTY THOUSAND EIGHT HUNDRED SIXTY PESOS (P3,870,860.00)**.*

---

[6] Ibid.
[7] CTA Second Division Rollo, pp. 260-275.
[8] CTA Second Division Rollo, pp. 278-283.
[9] Supra, note 2.

SO ORDERED."

Not satisfied with the above decision, BATANGAS CITY posted a "Motion for Reconsideration"[10] on July 30, 2007. On August 1, 2007, BATANGAS CITY posted a "Manifestation"[11] which was noted by the *CTA Second Division* in a Resolution[12] dated August 31, 2007. PSPC filed a "Motion for Time (To File Petitioner's Comment on Respondent's Motion for Reconsideration dated July 30, 2007)"[13] on September 14, 2007. The *CTA Second Division* granted the said motion in a Resolution[14] promulgated on September 18, 2007. In compliance with the said Resolution, PSPC filed an "Opposition (To Respondent's Motion for Reconsideration dated July 30, 2007)"[15] on September 24, 2007.

In the *Assailed Resolution*[16] dated November 21, 2007, the *CTA Second Division* denied BATANGAS CITY's Motion for Reconsideration for lack of merit. In the said Resolution, the *CTA Second Division* found no valid or cogent reason to deviate from its findings and conclusions reached in the Decision dated June 21, 2007 and as amended on July 31, 2007.

On December 26, 2007, BATANGAS CITY filed a Petition for Review[17] with the *CTA En Banc*, praying that the *Assailed Decision* rendered by the *CTA Second Division* be reversed and that PSPC be declared liable to pay the business taxes imposed by the City of Batangas. On January 28, 2008, the *CTA En Banc* promulgated a Resolution[18] directing Atty. Teodulfo A. Deguito to rectify the formal and procedural flaws made by the petitioner in its Petition for Review. In

[10] CTA Second Division Rollo, pp. 292-299
[11] CTA Second Division Rollo, pp. 304-305.
[12] CTA Second Division Rollo, p. 309.
[13] CTA Second Division Rollo, pp. 310-311.
[14] CTA Second Division Rollo, p. 314.
[15] CTA Second Division Rollo, pp. 315-342.
[16] Supra, note. 3.
[17] CTA EB Rollo, pp. 3-26.
[18] CTA EB Rollo, pp. 302-304.

compliance with the said Resolution, BATANGAS CITY filed a "Manifestation/Compliance"[19] on February 21, 2008. Attached therewith is an Amended Petition for Review[20].

Petitioner-BATANGAS CITY raised the following issues[21]:

> 1. The 2nd Division of the Court of Tax Appeals incorrectly construed a clear provision of law, specifically Section 133(h) of the Local Government Code of 1991, as an express limitation on the power of local government units to impose taxes on the business of manufacture and distribution of petroleum products.
>
> 2. The 2nd Division of the Court of Tax Appeals erred when it disregarded the doctrine enunciated in the case of Philippine Petroleum Corporation vs Municipality of Pillila, Rizal (198 SCRA 89) that a tax on business is distinct from a tax on the article itself.
>
> 3. The 2nd Division of the Court of Tax Appeals erred when it gave precedence to Article 232(h) of the implementing rules and regulations (IRR) of the Local Government Code of 1991 (LGC of 1991 for brevity) over Section 143(h) of the Local Government Code when it is very clear that said regulation cannot prevail over the substantive law which it is tasked to implement.
>
> 4. The 2nd Division of the Court of Tax Appeals erred when it gave great weight and credence on the incorrect interpretations given by the Department of Justice and the Department of Finance on the alleged exemption provided under Section 133(h) of LGC of 1991.

The *CTA En Banc* promulgated a Resolution[22] on March 5, 2008 noting the Manifestation/Compliance filed by the petitioner and accordingly admitting the Amended Petition for Review. In addition, the *CTA En Banc* ordered the respondent-PSPC to file a Comment on the said Amended Petition for Review,

---

[19] CTA EB Rollo, pp. 305-307.
[20] Supra, note 1.
[21] Ibid, pp. 317.
[22] CTA EB Rollo, pp. 377-378.

within ten (10) days from receipt of the said Resolution. On March 19, 2008, respondent-PSPC filed a "Motion for Time (To File Comment on the Amended Petition for Review dated February 20, 2008)"[23]. Said motion was granted by the *CTA En Banc* in a Resolution[24] dated March 25, 2008. In compliance with the said Resolution, respondent-PSPC posted a Comment[25] on April 14, 2008.

On July 30, 2008, respondent-PSPC filed an "Urgent Motion for Clarification"[26] seeking clarification as to whether or not there is still a need to renew the surety bond it filed with the *CTA Second Division* considering that the *CTA Second Division* promulgated an Amended Decision which is favorable to PSPC.

On August 22, 2008, a "Supplemental Urgent Motion for Clarification"[27] was filed by respondent-PSPC informing the Court that its surety bond is set to expire on the same date. Thus, respondent-PSPC reiterated the reliefs it sought in its Urgent Motion for Clarification and in addition, prayed that the Court orders the cancellation and the release of Malayan Insurance Company Inc. Bond MICO No. 2005-02942. In a Resolution[28] promulgated on August 26, 2008, the *CTA En Banc* ordered the respondent-PSPC to renew its surety bond. On November 25, 2008, respondent-PSPC filed a Compliance with the August 26, 2008 Resolution of the CTA *En Banc*. The said Compliance is hereby **NOTED**.

After a careful and thorough evaluation and consideration of the records of the case, the *CTA En Banc* finds no new matters which have not yet been considered and passed upon by the *CTA Second Division* in its assailed Decision and Resolution.

---

[23] CTA EB Rollo, pp. 379-381.
[24] CTA EB Rollo, p. 384.
[25] CTA EB Rollo. pp. 387-453.
[26] CTA EB Rollo, pp. 581-584.
[27] CTA EB Rollo, pp. 586-588.
[28] CTA EB Rollo. pp. 591-593.

As aptly discussed by the *CTA Second Division* in the Decision[29], as amended, and We quote, to wit:

"We grant the petition.

Petitioner is Not Subject to the Business Taxes on the Manufacture and Distribution of Petroleum Products.

The court a quo is not correct in ruling that petitioner is subject to the business taxes on the manufacture and distribution of petroleum products.

The mandate to impose taxes granted to local government units (LGUs), in furtherance of the state policy on local autonomy, is categorical and long-established in the 1987 Philippine Constitution and the Local Government Code (LGC).

However, such power to impose tax is not all-encompassing. It is subject to limitations as explicitly stated in Section 5 of the 1987 Constitution, as follows:

> *SECTION 5. Each Local government unit shall have the power to create its own sources of revenues 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. (Emphasis Supplied)*

The "Common Limitations on the Taxing Powers of Local Government Units" provided by Congress is found under Section 133 of the LGC.

Pertinent to this case is paragraph (h) of this provision of law which reads, as follows:

> *SECTION 133. Common Limitations on the Taxing Powers of Local Government Units. –* ***Unless otherwise provided herein****, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall* ***not extend to the levy*** *of the following:*

x x x x x x x x x

[29] Supra, note 6, pp. 249-23717-25.

> *(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and **taxes, fees or charges on petroleum products**; (Emphasis Supplied)*
>
> *x x x x x x x x x*

Based on the opening phrase "Unless otherwise provided herein", it is clear that the enumerated limitations are absolute, unless exceptions are specifically provided.

A reading of Section 133(h) reveals that there are two subject matters included in this section because of the word "and" which connects them. The following subject matters are covered: 1) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended; and 2) taxes, fees, and charges on petroleum products. Although petroleum products are subject to excise tax, it was taken out of that context by putting it after the word "and". Clearly, this is to emphasize the point that it was excluded in Section 143(h) of the LGC which allows the imposition of business taxes on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended.

Moreover, there is no qualification as to what "taxes, fees, or charges" to be imposed on the petroleum products. It is a well recognized rule that where the law does not distinguish, courts should not distinguish. Ubi lex non distinguit nec nos distinguere debemos.

In other words, as long as the subject matter of the taxing powers of the LGUs is the petroleum products per se or even the activity or privilege related to the petroleum products e.g. manufacturing and distribution of the said products, it is covered by the said limitation and thus, no levy can be imposed. Thus, We agree with petitioner that this second limitation does not only refer to taxes, charges or fees on the petroleum products per se, but to any business or transaction dealing with petroleum products.

Section 143(h) of the LGC is hereunder quoted for easy reference:

> *'**Sec. 143. TAX ON BUSINESS.** The municipality may impose taxes on the following businesses:*
>
> *x x x x x x x x x*
>
> ***(h)** On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That **on any business subject***

> ***to the excise**, value-added or percentage tax **under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.***
>
> *The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.' (Emphasis Supplied)*

Because of the express limitation of Section 133(h), the above-quoted provision cannot be used as basis for the imposition of business taxes on manufacturing and distributing petroleum products.

Hence, the argument that the LGC has vested LGUs the authority to collect business taxes on manufacturers and distributors of any article of commerce of whatever kind or nature is not applicable in this case. 'Petroleum products' should not be interpreted to be included in 'any article of kind and nature'.

It is elementary in statutory construction that when the law speaks in clear and categorical language, there is no reason for interpretation or construction but only for application. Applying the law, this Court finds petitioner not liable to the business taxes on the manufacturing and distribution of petroleum products.

This is also in line with the Resolution of the Department of Justice (Re: Declaration of Ordinance No. 7794 as Illegal and Unconstitutional), quoted hereunder:

> *'xxxx **Sections 143(h)** and 151 abovequoted **cannot be used in derogation on the clear exemption of petroleum products under Section 133(h)**. The presumption always is that the law enacted by the legislature is complete by itself, that the legislature did perform its function well, and that it is intended to impart such meaning as will render the law operative and effective (People vs. Martin, G.R. No. 38019, May 16, 1980, 98 SCRA 591 (1980); Asturias Sugar Central, Inc. vs. Commissioner of Customs, G.R. No. 19337, September 30, 1969, 29 SCRA 617 (1969). The legislature in enacting the Local Government Code of 1991, cannot be assumed to have inserted in the law a meaningless provision, one that government units can at their option freely ignore.*
>
> *The intent to exclude petroleum products is further made evident in the implementing regulations. Article 232 thereof states:*
>
> *Art. 232. Tax on Business.*

> *The Municipality may impose tax on the following businesses:*
>
> *(h) On any business, not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax provided that on any business subject to the exercise tax, VAT, or percentage tax under the NIRC, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year and provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline, and other petroleum products shall not be subject to any local tax imposed in this Article. (Emphasis Supplied)*
>
> ***The implementing regulations of the Local Government Code have the force and effect of law (Art. 7, New Civil Code) and unless declared to be illegal, cannot be disregarded.*** *xxx' (Emphasis Supplied)*

In its Opinion of October 25, 1993 on this point, the Department of Finance (DOF) has ruled that 'Any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax'.

Hence, petitioner is correct in saying that Article 232(h) of the Implementing Rules and Regulations (IRR) of the LGC, which was formulated and drafted by the Oversight Committee, is in harmony with Section 133(h) of the LGC, the law it intended to implement. Likewise, the argument on the 'existing national policy' as enunciated in Section 2 of Republic Act No. 6173 is affirmed.

The ruling of the Supreme Court in the case entitled ***Philippine Petroleum Corporation vs. Municipality of Pililia, Rizal*** *does not apply here. Under the old Local Tax Code, the law applicable in the case of Pililia, the following are the common limitations on the taxing powers of local governments:*

> *SECTION 5. Common limitations on the taxing powers of local governments. – The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:*
>
> *(a) Documentary stamp tax;*
> *(b) Taxes on forest products and forest concessions;*

> *(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided in this Code; SEIDAC;*
>
> *(d) Taxes on income of any kind whatsoever;*
>
> *(e) Taxes or fees for the registration of motor vehicles and for the issuance of all kings of licenses or permits for the driving thereof;*
>
> *(f) Customs duties, registration fees of vessels except as otherwise provided in this Code, and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues, except wharfage on wharves constructed and maintained by the local government concerned at rates not exceeding those fixed by the Tariff and Customs Code;*
>
> *(g) Taxes of any kind on banks and insurance companies;*
>
> *(h) Taxes on premiums paid by owners of property who obtain insurance directly with foreign insurance companies;*
>
> *(i) Export taxes, fees, or other levies on Philippine finished, manufactured or processed products, and products of Philippine cottage industries;*
>
> *(j) Taxes and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local governments in the guise of unreasonable charges for wharfage, use of bridges, or otherwise, or other taxes in any form whatever upon such goods or merchandise;*
>
> *(k) Taxes or fees on agricultural products when sold by the farmer or producer thereof, whether in their original form or not; and*
>
> *(l) Percentage tax on sales, except as otherwise provided in this Code.*

Petroleum products are not expressly covered by the common limitations on the taxing powers of local governments under the old Local Tax Code. On the other hand, such exemption was categorically stated under Sec. 133 of the 1991 LGC. Hence, the Pililia ruling is not applicable.

Based on the foregoing discussions, petitioner is clearly not subject to the business taxes on the manufacturing and distribution of petroleum products.

Mayor's Permit Was Grossly Excessive and Unreasonable

We agree with the findings of the lower court that Mayor's Permit fees paid under protest was grossly excessive and unreasonable.

The mayor's permit is imposed in the exercise of police power primarily for purposes of regulation. Being such, it must be reasonable and commensurate with the cost regulation, inspection and licensing of a business or occupation or practice of a profession or calling. Pertinent to this is Section 147 of the LGC which is quoted hereunder:

> *SECTION 147. Fees and Charges. – The municipality may impose and collect such* ***reasonable fees and charges on business*** *and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling,* ***commensurate with the cost of regulation, inspection and licensing*** *before any person may engage in such business or occupation, or practice such profession or calling. (Emphasis Supplied)*

Article 233 of IRR provides for a clear limit on what reasonable fees and charges should be. This provision complements with Section 147 of the LGC. It reads, as follows:

> *ARTICLE 233. Fees and Charges. – The municipality may impose and collect such* ***reasonable fees and charges*** *on business and occupations and, except as reserved to the province in Article 229 of this Rule, on the practice of any profession or calling before any person may engage in such business or occupation, or practice such profession or calling* ***provided*** *that* ***such fees or charges shall only be commensurate to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance.***
>
> ***No such fee or charge shall be based on capital investment or gross sales or receipts*** *of the person or business liable therefore. (Emphasis Supplied)*

Based on the above-quoted provision, for fees and charges to be reasonable: fees and charges should be proportionate/equal to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance. The last paragraph of Article 233 merely affirms the basis of the reasonableness of the fees and charge by saying that no fee/charge shall be based on capital investment or gross receipts of the person or business.

In this case, the mayor's permit being imposed is based on the gross receipt of the preceding calendar year although in a graduated scale. This is in clear violation of Section 147 of the LGC, as implemented by Article 233 of IRR.

The finality of the Decision of the lower court as regards the issue of the Mayor's Permit Fees was only insofar as the lower court found that the said payment made was excessive and unreasonable.

If petitioner would read carefully into the Decision of the lower court, the judgment about the revocation of the assessment of the Mayor's Permit Fees for the taxable year 2002 was 'without prejudice to its modification by the respondents, Batangas City, et al.'

This portion of the lower court's Decision was interpreted by the respondent in its 'Memorandum' filed on June 28, 2006 in this manner, 'This means that the Respondent City of Batangas is permitted to keep the payment provided that the provision of the Batangas City Tax Code on the matter is modified. In this regard, the City of Batangas has decided to comply with the mandate of the court and is presently modifying the tax code.' However, until now, no such modification was manifested to the Court.

Since, respondents failed to modify the computation of the mayor's permit fee and based on justice and equity, petitioner should be refunded with the mayor's permit fees ordered revoked by the court a quo.

The details of the additional amount of P4,299,851.00 mayor's permit fees are as follows:

	Manufacturer	*Distributor*
Mayor's Permit Fee	***P704,305.00***	***P3,166,555.00***
License Fee	*70,535.50*	
Prot. Fee Res/Bus		*25,000.00*
Fire Insp. Fee		*1,000.00*
Occ./Prof. Tax		
San Permit & San Insp. Fee		*12,000.00*
Fire Code Fee		*320,455.00*
Total Amount	***P774,840.50***	***P3,525,010.50***

The amount to be refunded is not the full amount of P4,299,851.00 but the excessive mayor's permit for manufacturing and distributing in the amount of P704,305.00 and P3,166,555.00, respectively or in the total amount of P3,870,860.00.

Court cannot rule on whether or not closure/

> ***suspension of operation of Tabangao Refinerey of PSPC Tabangao would serve the welfare of the consuming public***
>
> *This Court has already ruled that petitioner is not subject to the business taxes on the manufacturing and distribution of petroleum products pursuant to explicit provisions of law. Hence, We see no reason to dwell on the fourth issue because the wisdom of the law is being invoked.*
>
> *The Court is not in the position nor is it inclined to rule on this issue considering that wisdom of the law is limited to the legislature. On the other hand, the primary duty of the court is to apply the law."*

Further, in the recent case of *Petron Corporation vs. Tiangco et al., G.R No. 158881, April 16, 2008*, the Supreme Court held that,

> *"The language of Section 133 (h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all 'taxes, fees and charges.' The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, xxx xxx xxx. In contrast, the later reference to 'taxes, fees and charges' pertains only to one class of articles of the many subjects of excise taxes, specifically, 'petroleum products.' While local government units are authorized to burden all such other class of goods with 'taxes, fees and charges,' excepting excise taxes, a specific prohibition is imposed barring then levying of any other type of taxes with respect to petroleum products."*

In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed July 31, 2007 Amended Decision and November 21, 2007 Resolution of the *CTA Second Division*. What the instant petition seeks is for the *CTA En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.

WHEREFORE, the instant Petition for Review is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit. Accordingly, the July 31, 2007

Amended Decision and November 21, 2007 Resolution of the *CTA Second Division* in CTA AC Case No. 10 entitled, *"PILIPINAS SHELL PETROLEUM CORPORATION, petitioner vs. BATANGAS CITY, BENJAMIN E. PARGAS in his capacity as CITY TREASURER and TEODULFO A. DEGUITO in his capacity as CITY LEGAL OFFICER OF BATANGAS CITY, respondents"* are hereby **AFFIRMED *in toto***.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

See attached Separate Concurring Opinion

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice