REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SMART COMMUNICATIONS, INC., ***Petitioner,***	**C.T.A. EB NO. 767** **(C.T.A. AC NO. 58)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
MUNICIPALITY OF MALVAR, BATANGAS, ***Respondent.***	**Promulgated:**
	JUN 2 6 2012 ___

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DECISION

PALANCA-ENRIQUEZ, J.:

While *Section 7 of RA 9282, as amended,* confers on the Court of Tax Appeals jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged (*British American Tobacco vs. Camacho, 562 SCRA 511*).

THE CASE

This is a Petition for Review filed by Smart Communications, Inc. (hereafter "petitioner") under *Section 11 of RA 9282,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks to reverse and set aside the Decision dated December 17, 2010 and Resolution dated April 7, 2011 rendered by the First Division of this Court in C.T.A. A.C. No. 58, entitled "Smart Communications, Inc. vs. Municipality of Malvar, Batangas," the respective dispositive portions of which read, as follows:

> "**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated December 2, 2008 and the Order dated May 21, 2009 of Branch 6 of the Regional Trial Court of Tanauan City, Batangas in SP. Civil Case No. 04-11-1920 entitled "Smart Communications, Inc. vs. Municipality of Malvar, Batangas" are **AFFIRMED.**
>
> **SO ORDERED**."
>
> "There being no compelling legal argument raised by petitioner that will merit reconsideration, let alone modification of the assailed Decision of December 17, 2010, petitioner's "Motion for Reconsideration" dated January 10, 2011, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Smart Communications, Inc. is a domestic corporation engaged in the business of providing telecommunication services to the general public, with principal office at Smart Tower, Makati City.

On the other hand, respondent Municipality of Malvar, Batangas is a local government unit created by law, represented by the Office of the Municipal Mayor, with official address at the Municipal Hall, Malvar, Batangas.

THE FACTS

The antecedent facts, as summarized by the First Division are, as follows:

> "On July 30, 2003, the Municipality of Malvar, Batangas passed Ordinance No. 18, series of 2003, entitled "An Ordinance Regulating the Establishment of Special Projects."
>
> On August 24, 2004, petitioner received from the Permit and Licensing Division of the Office of the Mayor an assessment letter with a schedule of payment for a total sum of Php389,950.00 allegedly for its telecommunication tower built within respondent's territorial jurisdiction. The letter reads as follows:
>
> > 'This is to formally submit to your good office your schedule of payments in the

Municipal Treasury of the Local Government Unit of Malvar, province of Batangas which correspond to the tower of your company built in the premises of the municipality, to wit:

TOTAL PROJECT COST:	PHP11,000,000.00
For the Year 2001-2003	
50% of 1% of the total project cost	Php55,000.00
Add: 45% surcharge	24,750.00
	Php79,750.00
Multiply by 3 yrs (2001,2002,2003)	Php239,250.00
For the year 2004	
1% of the total project cost	Php110,000.00
37% surcharge	40,700.00
	Php150,700.00
Total:	Php389,950.00

Hoping that you will give this matter your preferential attention.'

Due to the alleged arrears in the payment of the foregoing assessment, respondent likewise caused the posting of a closure notice on the subject tower.

On September 9, 2004, petitioner filed a formal protest dated September 8, 2004, claiming lack of due process in the issuance of the assessment and closure notice. In the same protest, petitioner challenged the validity of Ordinance No. 18 upon which the assessment was based.

In a letter dated September 28, 2004, respondent denied petitioner's protest.

On November 17, 2004, petitioner filed with RTC, Branch 6 of Tanauan City, Batangas, an Appeal/Petition assailing the validity of Ordinance No. 18. The case entitled Smart Communications, Inc. vs. Municipality of Malvar, Batangas was docketed as SP. Civil Case No. 04-11-1920.

After exchange of various pleadings and trial, the RTC rendered the assailed Decision on December 2, 2008, partly granting petitioner's Appeal/Petition ruling that the assessment dated August 24, 2004, issued against petitioner was null and void but only as regard the assessment covering the period from 2001 to July 2003 on the ground that Ordinance No.18 was approved only on July 30, 2003. However, the RTC pronounced the assessment from October 1, 2003 valid, citing Article 4 of the Civil Code of the Philippines, in relation to the provisions of Ordinance no. 18 and Section 166 of the Local Government Code. A copy of the Decision was received by petitioner on December 12, 2008.

Not convinced, petitioner moved for a partial reconsideration of the foregoing Decision on December 24, 2008, which the RTC denied in the assailed Order of May 21, 2009, copy of which was received by petitioner on June 8, 2009."

On July 8, 2009, petitioner filed a Petition for Review with the First Division of this Court, docketed as C.T.A. A.C. No. 58.

On December 17, 2010, the First Division rendered a Decision denying the Petition for Review for lack of merit.

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On January 10, 2011, petitioner filed a "Motion for Reconsideration" of the Decision dated December 17, 2010.

On April 7, 2011, the First Division denied petitioner's "Motion for Reconsideration" for lack of merit.

On April 27, 2011, petitioner filed the instant Petition for Review before this *Court En Banc*, raising the following:

ISSUES

I

THE CTA-FIRST DIVISION COMMITTED A SERIOUS AND MANIFEST ERROR IN RULING THAT THE PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.

II

THE CTA-FIRST DIVISION COMMITTED A SERIOUS AND MANIFEST ERROR IN AFFIRMING THE COURT A QUO'S RULING THAT THE RESPONDENT MUNICIPALITY HAD THE AUTHORITY TO IMPOSE THE FEES AND ASSESSMENTS ON THE BASIS OF ORDINANCE NO. 18.

Without necessarily giving due course to the Petition for Review, on May 13, 2011, we ordered respondent to file its comment, not a motion to dismiss, within ten (10) days from notice.

On June 27, 2011, respondent filed, through registered mail, a "Motion for Extension of Time to File Comment", which was received by this Court on July 05, 2011.

On July 7, 2011, the Court *En Banc* issued a Resolution considering the "Motion for Extension of Time to File Comment" as not filed for failure to file the required number of copies.

On July 13, 2011, respondent filed its "Comment (on Petition For Review)".

On July 28, 2011, respondent filed a "Motion for Reconsideration" of the Resolution dated July 7, 2011 praying that its "Comment (on Petition for Review)" filed on July 13, 2011 be admitted.

On August 15, 2011, the case was deemed submitted for decision.

THE COURT *EN BANC'S* RULING

The petition is without merit.

At the outset, we rule that the issue on the validity or constitutionality of Ordinance No. 18, series of 2003 is not within the jurisdiction of this Court, but with the regular courts.

Section 7 of RA 9282, *as amended,* provides:

"SEC. 7. *Jurisdiction. – The CTA shall exercise:*

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

> 5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
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> 6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
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> 7. Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties."

Pursuant to the aforequoted Section 7(a)3, the CTA has exclusive appellate jurisdiction to review by appeal, decisions, orders or resolutions of the Regional Trial Court in tax cases originally resolved by them in the exercise of their original or appellate jurisdiction. However, said provision does not confer jurisdiction to the CTA where the constitutionality of a law or rule is challenged.

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As aptly ruled by the First Division:

> "In the case of *British American Tobacco vs. Camacho, 562 SCRA 511,* the Supreme Court held that while the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. **Clearly, jurisdiction over cases questioning the constitutionality or validity of a law is not among the mandates of this Court."**

Pursuant to the foregoing ruling, the determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Moreover, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.

Thus, pursuant to *Section 1, Rule 9 of 1997 Rules of Civil Procedure, as amended,* when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. Where there is a finding that any decision was rendered without jurisdiction, the action shall be dismissed, such defense can be interposed at any time, during appeal or even after final judgment *(Dily Dany Nacpil vs. International Broadcasting Corporation, 379 SCRA 653).*

It is basic that proceedings conducted or decisions made by a court are void where there is an absence of jurisdiction over the subject matter. A void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right or the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect *(Leonor vs. Court of Appeals, 256 SCRA 69).* Thus, a court devoid of jurisdiction can only dismiss the case for want of jurisdiction. The court cannot anymore dwell on the merits of the case.

It bears stressing that the CTA is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its jurisdiction. Its jurisdiction may only be invoked in the particular instances enumerated in *Section 7 of RA 9282, as amended.*

The foregoing conclusion renders unnecessary discussion of the other issues raised by petitioner for being moot and academic.

Finding no reversible error, we affirm the assailed Decision dated December 17, 2010 and Resolution dated April 7, 2011.

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

Accordingly, the assailed Decision dated December 17, 2010 and Resolution dated April 7, 2011 are hereby **AFFIRMED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice