REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MANILA NORTH TOLLWAYS CORPORATION,
Petitioner,

- versus -

THE MUNICIPALITY OF GUIGUINTO, BULACAN AND HON. LUALHATI NARCISO IN HER CAPACITY AS MUNICIPAL TREASURER OF GUIGUINTO, BULACAN,
Respondents.

CTA AC NO. 82

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
DEC 03 2012 ; 2:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This appeal via a *Petition for Review*[1] seeks to reverse the (1) Consolidated Decision[2] dated July 7, 2011, which denied petitioner's *Complaints* for the cancellation of the local business tax assessment and mayor's permit and other regulatory fees assessment issued against it by the Municipality of Guiguinto, Bulacan; and the (2) Order[3] dated October 6, 2011, which effectively affirmed the assailed Decision by denying petitioner's

[1] Docket, pp. 5-29.
[2] Docket, pp. 34-42.
[3] Docket, pp. 44-45.

Motion for Reconsideration, both rendered by Branch 84 of the Regional Trial Court (RTC) of Malolos City, Bulacan in Civil Case Nos. 75-M-2009 and 100-M-2009, entitled "***Manila North Tollways Corporation vs. The Municipality of Guiguinto, et al.***"

It was established that petitioner Manila North Tollways Corporation is an organized and existing domestic corporation with principal place of business at the North Luzon Expressway (NLEX) Compound, Balintawak, Caloocan City.

Respondents, on the other hand, are the local government unit (LGU) of the Municipality of Guiguinto, Bulacan, represented by its Municipal Mayor or such other authorized persons in the Office of the Municipal Mayor, Guiguinto Municipal Hall, Guiguinto, Bulacan; and the Municipal Treasurer of Guiguinto, Lualhati Narciso, who is in charged with the implementation of the Revenue Code of the Municipality of Guiguinto, Bulacan, as well as the collection and assessment of business taxes, license and permit fees within said municipality.[4]

On September 12, 2008, petitioner received from respondents an assessment for mayor's permit and other

[4] Pars. 2, 3 and 4, Parties, Petition for Review, docket, p. 6.

regulatory fees for the years 2004 to 2008 in the total amount of Php2,316,972.50, inclusive of surcharges and penalties. About a month later or on October 14, 2008, petitioner received another assessment, this time for local business tax (LBT) for the years 2005 to 2007 amounting to Php67,443,765.93, inclusive of surcharges and penalties.[5]

On November 4, 2008[6] and November 11, 2008[7], petitioner filed separate protest letters with the Office of the Municipal Treasurer of Guiguinto, assailing the two (2) assessments issued against it.

Respondent Municipal Treasurer denied both protests in a letter dated January 9, 2009, received by petitioner on January 15, 2009.[8]

This prompted petitioner to file two (2) separate complaints with the RTC of Malolos City, Bulacan, to wit: (1) Civil Case No. 75-M-2009, on February 2, 2009[9], to annul the LBT assessment; and, (2) Civil Case No. 110-M-2009, on February 9,

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[5] Pars. 9 and 10, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 7.
[6] Annex "E", Petition for Review, docket, pp. 60 to 75.
[7] Annex "F", Petition for Review, docket, pp. 76 to 87.
[8] Annex "G", Petition for Review, docket, pp. 94 to 95.
[9] Annex "H", Petition for Review docket, pp. 96 to 126.

2009,[10] to annul the permit and regulatory fees assessment. Civil Case No. 75-M-2009 was raffled to RTC Branch 84; while Civil Case No. 110-M-2009 to RTC Branch 20. At the parties' instance, Civil Case No. 110-M-2009 was consolidated with Civil Case No. 75-M-2009 and jointly heard by RTC Branch 84.[11]

On March 24, 2009, respondents filed separate Answers with Counter Claim for the two cases.[12]

On November 12, 2009, the Republic of the Philippines, through the Office of the Solicitor General, filed an *Omnibus Motion [(i) For Intervention; and, (ii) to Admit Hereto Attached Manifestation and Motion in Intervention]*[13], which the RTC granted.[14]

In its *Complaints*, petitioner prayed for a writ of preliminary injunction to restrain respondent from enforcing and collecting the assessed LBT, as well as assessed mayor's permit and regulatory fees and from further assessing, imposing, or collecting any local business taxes, permits, or regulatory fees

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[10] Annex "I", Petition for Review, docket, pp. 133 to 156.
[11] Order dated February 18, 2009, Volume II, RTC Records, pp. 64 to 65.
[12] Volume I, RTC Records, pp. 146 to 152 and Volume II, RTC Records, pp. 145 to 151.
[13] Volume I RTC Records, pp. 417 to 438.
[14] Volume I, RTC Records, p. 539.

from petitioner during the pendency of the civil cases.[15] In the Order dated February 17, 2010,[16] the RTC denied the relief prayed for. Petitioner's *Motion for Reconsideration* was also denied in the Order dated March 12, 2010.[17]

This led petitioner to file a *Petition for Certiorari* with the Court of Appeals primarily assailing the denial of its application for a writ of preliminary injunction. The Court of Appeals, in its Decision dated July 23, 2010, denied the petition for lack of jurisdiction as well as petitioner's Motion for Reconsideration in the Resolution of December 3, 2012.[18]

In the Order dated August 31, 2010, the RTC, citing the Court of Appeals' Decision of July 23, 2010, denied the *Motion for Reconsideration* of the Order dated February 17, 2010, earlier filed by Intervenor Republic of the Philippines. [19]

On June 25, 2010, to allegedly avoid further inconvenience and possible disruption of petitioner's operations but without

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[15] Pars. 14 and 15 , Statement of Facts and Antecedent Proceedings, Petition for Review, docket, pp. 8 to 9; Complaint docketed as Civil Case No. 75-M-2009, Volume I, RTC Records, p. 29; Complaint docketed as Civil Case No. 110-M-2009, Volume II, RTC Records, p. 24.
[16] Par. 15, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 9; Volume I, RTC Records, pp. 493 to 495.
[17] Volume I, RTC Records, p. 532.
[18] Par. 16, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 9.
[19] Volume I, RTC Records, p. 579.

admitting its liability for any past, current or future LBT and mayor's permit and regulatory fees, petitioner executed with respondent a Memorandum of Agreement whereby it agreed to remit the amount of Php5,000,000.00 to respondents subject to the condition that in the event that a final, unappealable, and executory judgment by a court of competent jurisdiction be rendered fully or partially exempting petitioner from local business tax and permits and regulatory fees, the full amount paid shall be refunded to petitioner or credited or set-off against any taxes, fees charges, or other liabilities that are legally and irrefutably owing to the Municipality of Guiguinto, Bulacan.[20]

During trial before the RTC, only petitioner presented evidence.[21] Respondents did not,[22] but formally offered the exhibits they presented during the hearings on the application for a writ of preliminary injunction,[23] which the RTC admitted in its Order dated April 18, 2011.[24]

After the parties filed their respective memoranda[25] on May 31, 2011, the consolidated cases were submitted for decision.

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[20] Volume I, RTC Records, pp. 687 to 700.
[21] Par. 17, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, pp. 9 to 11; Volume I, RTC Records, p. 648.
[22] Minutes of the January 17, 2011 Hearing, Volume I, RTC Records, p. 647.
[23] Respondents' Formal Offer of Evidence, Volume I, RTC Records, pp. 677 to 679.
[24] Volume I, RTC Records, p. 714.
[25] Volume I, RTC Records, p. 741.

On July 7, 2011, the RTC rendered the assailed Consolidated Decision in favor of respondents, in this wise:[26]

> ***WHEREFORE***, for lack of merit, both complaints are hereby DISMISSED. Accordingly, the imposition of the subject taxes by the defendants is upheld and plaintiff is hereby ordered to settle the same upon finality of this decision.
>
> **SO ORDERED**.

On August 9, 2011, petitioner filed a *Motion for Reconsideration* alleging, among others, that the RTC failed to consider that the assessments issued by respondents have absolutely no factual and legal bases. Allegedly, the basis of computation of petitioner's alleged LBT liability is neither in the Local Government Code (LGC) nor in the Revenue Code of Guiguinto, Bulacan (Guiguinto Revenue Code), much more in settled jurisprudence.[27]

In their *Comment and/or Opposition* filed on September 1, 2011, respondents argued that the LBT assessment was based on both Section 143(h) of the LGC which states that the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year, and Section 2A-02(j) of the

[26] Volume I, RTC Records, pp. 789 to 797.
[27] Par. 21, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 12; Volume I, RTC Records, pp. 798 to 816.

Guiguinto Revenue Code, which imposes LBT of 2% of gross receipts.[28]

Not convinced, the RTC denied petitioner's *Motion for Reconsideration* in its Order dated October 6, 2011, ruling that petitioner did not raise as an issue the correctness of the computation of the LBT assessment.[29]

On October 28, 2011, petitioner filed with the RTC a *Manifestation and Tender of Excluded Evidence* in connection with the ruling that it did put in issue the correctness of the disputed LBT assessment.[30]

On November 9, 2011, petitioner sought this Court's intervention via the instant *Petition for Review,* imploring the Court to:

> (a) reverse the Consolidated Decision dated July 7, 2011 and the Order dated October 6, 2011 of the RTC;
>
> (b) issue a decision annulling and setting aside the LBT assessment and mayor's permit and regulatory fees assessment issued against it, and,

[28] Volume I, RTC Records, pp. 824 to 832.
[29] Volume I, RTC Records, pp. 851 to 852.
[30] Volume I, RTC Records, pp. 860 to 864.

(c) direct respondents, their agents, substitutes, representatives, and all persons acting under their direction or authority to permanently desist from levying, imposing, assessing, or collecting LBT, mayor's permit, and regulatory fees against it.[31]

On November 18, 2011, the Court allowed the parties to trade pleadings while the Branch Clerk of Court of RTC Branch 84 was directed to elevate to the Court the entire original records of Civil Case Nos. 75-M-2009 and 110-M-2009.

Upon compliance with the foregoing directive by the parties on December 12, 2011[32] and by the Branch Clerk of Court on December 16, 2011[33], the instant petition was deemed submitted for decision on January 4, 2012.[34]

THE ISSUE

The sole issue submitted for the determination of the Court is whether or not petitioner is liable to pay respondents LBT and

[31] Docket, pp. 5 to 29.
[32] Docket, pp. 359 to 369.
[33] Docket, pp. 371 to 383.
[34] Docket, p. 386.

mayor's permit and regulatory fees for the years 2005 to 2007 and onwards. [35]

THE COURT'S RULING

Situs of petitioner's LBT pursuant to Section 150 of the LGC

Petitioner postulates that its two (2) toll plazas, namely, the Tabang Toll Plaza and Sta. Rita Toll Plaza, their customer service centers, and its district office in Sta. Rita, all situated within the Municipality of Guiguinto, Bulacan, cannot be considered as branches or sales offices as defined under Section 243(a)(2) of the Implementing Rules and Regulations (IRR)[36] of the LGC. The toll booths in said toll plazas are mere infrastructures where tolls are paid for the privilege to use the NLEX and as such, they should not be considered as extensions of the principal office which conducts the operations of the business.

Further, its district office in Sta. Rita should not be considered as a branch or sales office under Article 243(a)(2) of

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[35] Issue, Petition for Review, docket, p. 12.
[36] Administrative Code No. 270.

the IRR of the LGC. To be such, the business of the principal office is conducted by extension in such branch or sales office. To be considered a branch or sales office, it must be able to perform all the principal activities performed by its principal office. Since the Sta. Rita district office does not perform all the activities performed by the principal office, it should not be considered as a branch. Thus, the only situs of petitioner's LBT is the LGU where its principal office is located pursuant to Section 150 of the LGC.[37]

In their Comment, respondents stress that the toll plazas and customer service centers situated within Guiguinto, Bulacan are actually performing the functions of a branch or sales outlet as indicated in the testimonies of petitioner's witnesses, Atty. Romulo S. Quimbo and Atty. Cynthia Maria G. Casino. Based on Atty. Quimbo's testimony: (1) there are customer service centers at petitioner's Tabang and Sta. Rita toll plazas; (2) the Sta. Rita customer service has a motor pool, toll collection department, traffic safety and control division; (3) the Tabang and Sta. Rita toll plazas are also utilized for the payment of toll fees and that they issue receipts for such payments; and (4) easy tags could likewise be loaded on these toll plazas.

[37] Pars. 31 to 40, Discussion, Petition for Review, docket, pp. 14 to 16.

On the other hand, Atty. Casino dwelt on the factual basis of the imposition, assessment and collection of LBT as well as mayor's permit and regulatory fees by confirming that petitioner has two (2) sales offices within the Municipality of Guiguinto, Bulacan where easy tags and loads are sold and that such sales of easy tags and loads are sales or transactions of petitioner.[38]

In the assailed Consolidated Decision, the RTC expressed its justification for ruling that petitioner maintains branch or sales office within the Municipality of Guiguinto, Bulacan, in this wise:

> Quimbo likewise admitted that there are customer service centers at its Tabang and Sta. Rita gates but the personnel there are employees of Tollways Management Corporation (TMC) and not of the plaintiff. Quimbo also clarified that TMC is a management company engaged by the plaintiff to conduct the day to day business operations, toll collections, security, patrolling, assistance to motorists along the system. Quimbo further explained that plaintiff pays for the services rendered by TMC. Quimbo admitted further that the Sta. Rita customer service center has a motor pool, toll collection department, traffic safety and control division, customer service and emergency clinic.
>
> Quimbo also admitted that plaintiff sells transponders and magnetic cards at its Tabang and Sta. Rita customer service centers. Quimbo likewise acknowledged that the said transponders or easy tags may be reloaded at the Tabang and Sta. Rita toll gates. Similarly, Quimbo admitted that the

[38] Pars. 5 to 7, Discussion, Comment, docket, pp. 362 to 363.

north-bound vehicles exiting through Tabang and Sta. Rita toll gates are required to pay toll fees and are issued receipts for such payments.

Quimbo admitted further that motorists traveling from Balintawak to Bocaue are charged a fixed or flat fee, while those traveling from Bocaue and exiting to either Tabang or Sta. Rita gates are charged fees based on the kilometers they traveled.

xxx xxx xxx

When cross-examined, Casino alleged that TMC became a sub-contractor of the plaintiff based on an Operation and Management Agreement (OMA) which was allowed by the STOA. Casino also confirmed that the scope of the operation of TMC under the OMA is one (1) district from Balintawak to Sta. Ines, Pampanga, and the building housing such district is located in Sta. Rita, Guiguinto, Bulacan. Casino likewise acknowledged that the Sta. Rita District Office is in charged (sic) of deploying resources and personnel to perform certain functions under the OMA. Casino also admitted that the Sta. Rita District Office has around 150 to 180 personnel.

Casino acknowledged further that the Sta. Rita office has a motor pool and a clinic. Casino likewise admitted that TMC has two sales offices, one located in Sta. Rita and the other in Tabang both within the Municipality of Guiguinto, where easy tags and its loads of the plaintiff are sold. In view thereof, Casino confirmed that the sale of such easy tags and its loads are sales transactions.

xxx xxx xxx

Casino likewise admitted that TMC conducts sales transactions in the Sta. Rita and Tabang toll gates of the plaintiff and the income collected thereat are considered earnings of the latter. Casino also clarified that TMC is paid a fix fee by the plaintiff and

> has no commission on its collections from the operation and maintenance of NLEX.
>
> Casino explained further that the Sta. Rita building is owned by the plaintiff and TMC holds office therein for free since it is the one performing the responsibility of the former (plaintiff) in operating and maintaining NLEX as a contractor.
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> xxx xxx xxx
>
> While the overwhelming proofs, even coming from the admissions of plaintiff's own witnesses that massive sales transactions occur and are consummated in its Sta. Rita and Tabang service centers and toll plazas, show that such service centers are performing the functions of branches or sales outlets, the plaintiff has only offered its opinion to prove that the said service centers are not branches or sales outlets but mere support facility. Plaintiff's only evidence to support such opinion is its claim that all its sales are recorded in its principal office in Caloocan City where it pays its local taxes.[39]

Taking all the foregoing circumstances together, duly established during the trial before the court *a quo*, the Court finds the petition wanting in material and compelling or persuasive reason enough to grant the relief prayed for by petitioner. The evidence overwhelmingly show that business operations of petitioner are also conducted through its Tabang and Sta. Rita toll plazas and customer service centers and through its Sta. Rita district office, all of which are within the Municipality of Guiguinto, Bulacan.

[39] Volume I, RTC Records, pp. 789 to 797

The business activities and operations conducted by petitioner in its Tabang and Sta. Rita toll plazas and customer service centers and Sta. Rita district partake the nature of branches as defined under Article 243(a)(2) of the IRR of the LGC, to wit:

> Article 243. *Situs of the Tax.* (a) Definition of Terms —
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> xxx xxx xxx
>
> (2) Branch or Sales Office — **a fixed place in a locality which conducts operations of the business as an extension of the principal office**. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received thereat, are not branch or sales offices as herein contemplated. A warehouse which accepts orders and/or issues sales invoices independent of a branch with sales office shall be considered as a sales office. (*Emphasis supplied*)

In view of the foregoing provision, petitioner's Tabang and Sta. Rita toll plazas and customer service centers and Sta. Rita district office are deemed branches which petitioner maintains for the conduct of its business, all of which are located in the Municipality of Guiguinto, Bulacan. Thus, any sales of said branches or outlet shall be subject to LBT which shall accrue solely to the Municipality of Guiguinto, Bulacan in accordance with Section 150(a) of the LGC as implemented by Article 243(b)(1) of its IRR. The provision reads as follows:

> SEC. 150. *Situs of the Tax*. – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers, and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, **maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located**. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality. (*Emphasis supplied*)

> Article 243. *Situs of the Tax*. –
>
> xxx xxx xxx
>
> (b) Sales Allocation – (1) **All sales made in a locality where there is a branch or sales office or warehouse shall be recorded in said branch or sales office** or warehouse and the **tax shall be payable to the city or municipality where the same is located**. (*Emphasis supplied*)

Section 150(a) of the LGC as implemented by Section 243(b)(1) of its IRR is clear. The LBT due on the sales or transactions of a branch or sales outlet shall be paid to the municipality where such branch or sales outlet is located. Since its terms are clear, there is no room for interpretation. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language.[40]

Applying Section 150(a) of the LGC as implemented by Section 243(b)(1) of its IRR to the instant case, since petitioner maintains branches within the Municipality of Guiguinto, Bulacan from which it derives gross receipts by selling and loading transponders/easy tags and accepting toll fees from motorists, petitioner is obliged to record such sales or transactions in the branches which make the sales, and pay the corresponding LBT to the Municipality of Guiguinto on the basis of the actual gross receipts derived by the said branches.

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[40] *Tawang Multi-Purpose Cooperative vs. La Trinidad Water District*, G. R. No. 166471, March 22, 2011, citing *Security Bank and Trust Company vs. Regional Trial Court of Makati*, Branch 61, G.R. No. 113926, October 23, 1996.

Basis of Computation of LBT Liability

With these finding, the Court needs to determine whether the basis of respondents in computing the LBT liability of petitioner for the years 2005 to 2007 is not flawed.

Respondents computed petitioner's LBT liability by initially dividing petitioner's "Total Revenues" by the "Total Length of Toll Road" to arrive at petitioner's "Average Income per Km/year". Thereafter, respondents multiplied the "Average Income per Km/year" and the "Total Road Length Guiguinto Area-kms" to arrive at the "Toll Fees Realized From & To the two (2) toll gates and vice versa", which was the tax base used in computing petitioner's LBT liability pursuant to Section 2A.02(j) of the Guiguinto Revenue Code.[41]

Petitioner asserts that the respondents' computation of alleged LBT liability has no basis in the LGC, Guiguinto Revenue Code and jurisprudence. The LBT assessment made no reference to the gross receipts from the toll transactions in the alleged branches located at the Municipality of Guiguinto, Bulacan. Therefore, for lack of legal and factual basis to assess, impose,

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[41] Defendants (respondents herein) Exhibit "5-A", Volume I, RTC Records, p. 95.

and compute, petitioner is not liable for LBT assessments issued against it by respondents.[42]

The computation of petitioner's LBT liability for the years 2005 to 2007 by respondents is erroneous.

It must be stressed that petitioner was granted by the government the concession to finance, design, rehabilitate, expand, operate, and maintain the NLEX.[43] For maintaining and operating the NLEX, petitioner charges toll fees on its users.[44] And as a tollway operator rendering service for a fee, petitioner is deemed as a service provider. This much is clarified by no less than the Supreme Court in the case of *Renato V. Diaz and Aurora Ma. F. Timbol vs. The Secretary of Finance and The Commissioner of Internal Revenue,*[45] thus:

> Now, do tollway operators render services for a fee? Presidential Decree (P.D.) 1112 or the Toll Operation Decree establishes the legal basis for the services that tollway operators render. Essentially, tollway operators construct, maintain, and operate expressways, also called tollways, at the operators' expense. Tollways serve as alternatives to regular public highways that meander through populated areas and

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[42] Pars. 46 to 57, Discussion, Petition for Review, docket, pp. 18 to 25.
[43] Par. 8, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 7.
[44] Defendants' (respondents herein) Exhibit "11-H", Volume I, RTC Records, p. 214.
[45] G.R. No. 193007, July 19, 2011.

> branch out to local roads. Traffic in the regular public highways is for this reason slow-moving. In consideration for constructing tollways at their expense, the operators are allowed to collect government-approved fees from motorists using the tollways until such operators could fully recover their expenses and earn reasonable returns from their investments.
>
> When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights that its contract and the law recognize. xxx

Undeniably, petitioner is engaged in the sale of services for a fee. And since its business primarily to maintain and operate NLEX for a fee, petitioner falls within the classification of a "contractor" defined under Section 131(h) of the LGC and Section 2A.01(h) of the Guiguinto Revenue Code, which reads as follows:

> SECTION 131. *Definition of Terms*. – When used in this Title, the term:
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> xxx xxx xxx
>
> (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. (*Emphasis supplied*)

w/

> SEC. 2A.01. **Definitions**. When used in this article:
>
> xxx xxx xxx
>
> (k) '**Contractor**' includes persons natural or juridical, not subject to professional tax imposed by the province, **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. (*Emphasis supplied*)

A fortiori, petitioner's LBT liability as a contractor should be computed on the basis of Section 143(e) of the LGC and Section 2A.02(e) of the Guiguinto Revenue Code, which state:

> SEC. 143. *Tax on Business.* The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (e) On contractors and other independent contractors in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of		Amount of Tax Per Annum
xxx	xxx	xxx
P2,000,000.00 or more		at a rate not exceeding fifty percent (50%) of one (1%) percent

> SEC. 2A.02. **Imposition of Tax**. There is hereby levied an annual tax on the following business at rates prescribed thereof:
>
> xxx xxx xxx

(e) On contractors and other independent contractors in accordance with the following schedule (includes all services, manpower, funeral parlor):

With gross receipts for the preceding calendar year in the amount of		Amount of Tax Per Annum
xxx	xxx	xxx
P2,000,000.00 or more		At the rate of 50% of one (1%) percent

In the instant case, however, respondents classified the petitioner's business as one falling under Section 2A.02(j) of the Guiguinto Revenue Code[46] in relation to Section 143(h) of the LGC[47]. In their Comment to the instant Petition for Review, respondents recognized that Section 2A.02(j) of the Guiguinto Revenue Code and Section 143(h) of the LGC provide that the rate of LBT should not exceed two percent (2%) of the gross sales or receipts of the preceding calendar year.[48] But in its Notice of Assessment dated October 7, 2008, received by petitioner on October 14, 2008, respondents computed petitioner's liability based on the latter's gross revenue and not its gross receipts.

[46] Section 2A.02(j) of Guiguinto Revenue Code refers to other businesses not specifically enumerated under Section 2(A).02 (a) to (i).

[47] Section 143(h) of the LGC refers to any business not otherwise specified in Section 143(a) to (g).

[48] Par. 12, Discussion, Comment, docket, p. 365

In the case of *Ericsson Telecommunications, Inc. vs. City of Pasig, et al.*[49], the Highest Tribunal cancelled the LBT assessment against Ericsson Telecommunications, Inc. which was based on gross revenue and not on gross receipts. The following portions of the decision are instructive:

> Respondent is authorized to levy business taxes under Section 143 in relation to Section 151 of the Local Government Code.
>
> Insofar as petitioner is concerned, the applicable provision is subsection (e), Section 143 of the same Code covering contractors and other independent contractors, to wit:
>
> > SEC. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
> >
> > xxx xxx xxx
> >
> > (e) On contractors and other independent contractors, in accordance with the following schedule:
> >
> > | With **gross receipts** for the preceding calendar year in the amount of | Amount of Tax Per Annum |
> > |---|---|
> >
> > x x x x
> >
> > (Emphasis supplied)
>
> The above provision specifically refers to *gross receipts* which is defined under Section 131 of the Local Government Code, as follows:
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> > xxx xxx xxx
> >
> > (n) *'Gross Sales or Receipts'* include the total amount of money or its equivalent representing the

[49] G.R. No. 176667, November 22, 2007

> contract price, compensation or service fee, including the amount charged or materials supplied with the services and the deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);
>
> xxx xxx xxx

The law is clear. *Gross receipts* include money or its equivalent actually or constructively received in consideration of services rendered or articles sold, exchanged or leased, whether actual or constructive.

In *Commissioner of Internal Revenue v. Bank of Commerce*, the Court interpreted *gross receipts* as including those which were actually or constructively received, *viz.*:

> **Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt**. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax*.
>
> The concept of a withholding tax on income *obviously and necessarily* implies that the amount of the tax withheld comes from the income earned by the taxpayer. Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts. (Emphasis supplied)

Further elaboration was made by the Court in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, in this wise:

> Receipt of income may be actual or constructive. We have held that the withholding process results in the taxpayer's constructive receipt of the income withheld, to wit:
>
> By analogy, we apply to the receipt of income the rules on *actual* and *constructive* possession provided in Articles 531 and 532 of our Civil Code.
>
> Under Article 531:
>
> > 'Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.'
>
> Article 532 states:
>
> > 'Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case.'
>
> > The last means of acquiring possession under Article 531 refers to juridical acts—the acquisition of possession by sufficient title—to which the law gives the force of acts of possession. Respondent argues that only items of income *actually* received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have actual receipt thereof.
>
> > We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, possession by any

> person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.
>
> In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus *constructive* receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed—for legal purposes—tantamount to delivery, receipt or remittance.

Revenue Regulations No. 16-2005 dated September 1, 2005 defined and gave examples of 'constructive receipt', to wit:

SEC. 4.108-4. *Definition of Gross Receipts*. -- xxx

'***Constructive receipt***' occurs when the money consideration or its equivalent is placed at the control of the person who rendered the service without restrictions by the payor. The following are examples of constructive receipts:

(1) deposit in banks which are made available to the seller of services without restrictions;

(2) issuance by the debtor of a notice to offset any debt or obligation and acceptance thereof by the seller as payment for services rendered; and

(3) transfer of the amounts retained by the payor to the account of the contractor.

There is, therefore, constructive receipt, when the consideration for the articles sold, exchanged or leased, or the services rendered has already been placed under the control of the person who sold the goods or rendered the services without any restriction by the payor.

In contrast, ***gross revenue*** covers money or its equivalent actually or constructively received, **including the value of services rendered or articles sold, exchanged or leased, the payment of which is yet to be received**. This is in consonance with the International Financial Reporting Standards, which defines *revenue* as the gross inflow of economic

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> benefits (cash, **receivables**, and other assets) arising from the ordinary operating activities of an enterprise (such as sales of goods, sales of services, interest, royalties, and dividends), which is measured at the fair value of the consideration received or **receivable**.
>
> As aptly stated by the RTC:
>
> > '**[R]evenue** from services rendered is recognized when services have been performed and are billable.' It is 'recorded at the amount received or **expected to be received**.' (Section E [17] of the Statements of Financial Accounting Standards No. 1).
>
> In petitioner's case, its audited financial statements reflect income or revenue which accrued to it during the taxable period although not yet actually or constructively received or paid. This is because petitioner uses the accrual method of accounting, where income is reportable when all the events have occurred that fix the taxpayer's right to receive the income, and the amount can be determined with reasonable accuracy; the right to receive income, and not the actual receipt, determines when to include the amount in gross income.
>
> The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.
>
> Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*. (*Emphasis supplied*)

This Court relied on the foregoing ruling in resolving the case of *Synovate Inc. (formerly PMI Asia, Inc.) vs. Pasig City, Hon. Roberto C. Eusebio in his capacity as Mayor of Pasig City, et* *al.*[50] The Court cancelled the LBT assessment issued against Synovate Inc. for taxable years 2004 and 2005, for lack of basis since the LBT assessment was based on Synovate Inc.'s gross revenue as appearing in its audited financial statements rather than on its gross receipts.

Under the principle of judicial hierarchy, this Court is obliged to apply the ruling of the Supreme Court in resolving the instant *Petition for Review*. This is in consonance with the deeply-engrained doctrine that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[51]

Thus, while the Court agrees with the court *a quo* that petitioner is liable for LBT with the Municipality of Guiguinto, Bulacan based on the factual circumstances established during trial, the Court has to cancel the LBT assessment issued by respondents against petitioner for calendar years 2005 to 2007

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[50] CTA AC NO. 53, January 8, 2010.
[51] *Church Assistance Program, Inc. vs. Hon. Vicente P. Sibulo, et al.*, G.R. No. 76552, March 21, 1989.

for lack of legal mooring based on the doctrine laid down in *Ericsson Telecommunications, Inc. vs. City of Pasig, et al.*[52]

Liability for Mayor's Permit and Regulatory Fees

Petitioner claims that respondents lack legal or factual basis to assess mayor's permit and other regulatory fees against it. Allegedly, the mere presence of its toll plazas within the territorial jurisdiction of the Municipality of Guiguinto, Bulacan is not tantamount to conducting business therein. Even assuming that it conducts business therein, its business does not fall under any of the businesses, trades, or activities enumerated under the Guiguinto Revenue Code required to pay the mayor's permit and other regulatory fees.

Further, mayor's permit and regulatory fees are collected in the exercise of the LGU's police power and imposed in exchange for the "protection" it furnishes the business that thrive within it. In the instant case however, petitioner receives no benefit from respondents to entitle them to the imposition and collection of such mayor's permit and other regulatory fees.

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[52] *Supra.*

Petitioner operates and maintains the toll roads, toll booths, toll plazas, and other structures itself, and any policing that occurs within the NLEX is done by petitioner through its duly deputized agents.[53]

Indeed, respondents contend, the imposition of fees and the requirement to secure a permit are part of the police power of the LGU. But being a delegated statutory power of the LGU as provided under Section 16 of the LGC, it cannot be surrendered nor waived and for as long as a business activity is being carried out or conducted within the municipality of the LGU, mayor's permit must be secured.[54]

Petitioner's position has no leg to stand on.

Mayor's permit or license fees are charges imposed under the local government's exercise of police power which are intended to cover the cost of regulating business activities or privileges. The Supreme Court in *Acebedo Optical Company, Inc. vs. The Honorable Court of Appeals, et al.*[55] explained the nature and the parameters of the exercise of police power in this fashion:

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[53] Pars. 58 to 67, Petition for Review, docket, pp. 25 to 27.
[54] Pars. 15 to 19, Discussion, Comment, docket, pp. 367 to 368.
[55] G.R. No. 100152, March 31, 2000.

> Police power as an inherent attribute of sovereignty is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation. This delegation of police power is embodied in the general welfare clause of the Local Government Code which provides:
>
> > **Sec. 16. General Welfare**. — *Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.*
>
> The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. xxx

Since mayor's permit and license fees are imposed in the exercise of police power primarily for the purpose of regulation, the law mandates that the mayor's permit and license fees shall be imposed and collected before any person may engage in business within the municipality. Section 147 of the LGC provides:

> SEC. 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*)

Furthermore, Article 233 of the IRR of the LGC, which implements Section 147 of the LGC, also provides:

> ARTICLE 233. *Fees and Charges*. — The municipality may impose and collect such **reasonable fees and charges on businesses 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 therefor. *(Emphasis supplied)*

It is clear under Section 147 of the LGC and Article 233 of its IRR that mayor's permit and other regulatory fees may be required and imposed by LGUs before individuals or juridical entities can engage in any business within the LGUs territorial jurisdictions.

Accordingly, as an entity that conducts business within the territorial jurisdiction of the Municipality of Guiguinto, Bulacan, petitioner cannot avoid and therefore liable to pay mayor's permit and other regulatory fees assessed by respondents in their Notice of Assessment dated September 2, 2008.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assailed Consolidated Decision dated July 7, 2011 and the Order dated October 6, 2011, rendered by the Regional Trial Court of Malolos City, Bulacan, Branch 84, are hereby **MODIFIED**. The Notice of Assessment dated October 7, 2008 issued against petitioner for local business tax for the years 2005 to 2007 in the total amount of P67,443,765.93, is hereby **CANCELLED and SET ASIDE,** for lack of basis.

Petitioner is however ordered to **PAY** the Municipality of Guiguinto, Bulacan the mayor's permit and other regulatory fees assessment for the years 2004 to 2008 in the total amount of P2,316,972.50, inclusive of surcharges and penalties, as stated in respondents' Notice of Assessment dated September 2, 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
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's Division.

ERNESTO D. ACOSTA
Presiding Justice