REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

ERNESTO A. SANCHO, doing business under the trade name and style E.A. SANCHO CONSTRUCTION,
Plaintiff,

-versus-

PROVINCIAL TREASURER OF CAMARINES SUR,
Defendant.

C.T.A. Case No. 8504

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 18 2012
11:27 a.m.

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RESOLUTION

This is a "Verified Complaint" filed on June 21, 2012 by plaintiff Ernesto A. Sancho under *Section 7(c)(1) of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals*) praying for the declaration as complete nullity of the Letter dated October 11, 2006 of the Provincial Treasurer of Camarines Sur assessing and demanding plaintiff to pay the amount of P2,631,306.60 as tax and penalties on sand, gravel and other quarry resources under *Sections 13 and 18 of Provincial Tax Ordinance*

No. 30, series of 1992 ("Provincial Tax Ordinance 30"), and *Section 9 of Ordinance No. 24, series of 1994* ("Ordinance 24").

Section 13 of Provincial Tax Ordinance 30 provides:

> "SEC. 13. Sand and Gravel Tax. There is hereby imposed a tax of ten percent (10%) of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources extracted from public and private lands of the government or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within the jurisdiction of the province."

While *Section 18 of same Tax Ordinance* provides:

> "SEC. 18. Failure to Carry Delivery Receipts. Truck drivers and haulers of sand, gravel and quarry materials who fail to present the required delivery receipt upon demand shall, upon conviction, pay a fine of One Hundred (P100.00) Pesos per cubic meter of the materials being transported. Failure to pay the fine shall be a cause for the impounding of materials and vehicles to be released only upon payment of the required amount to the Provincial Treasurer."

On the other hand, *Section 9 of Ordinance 24* provides:

> "SEC. 9. PENALTY – Violation of this Ordinance shall be penalized as follows:
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> (A) For owner/buyer of forest product, a fine of ONE THOUSAND (P1,000.00) PESOS for the first offense; and, for the second offense, confiscation of the product and a fine of not more than FIVE THOUSAND (P5,000.00) PESOS or imprisonment of not more than six (6) months or both at the discretion of the court.

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> For owner/buyer of mineral product, a fine of ONE HUNDRED (P100.00) PESOS per cubic meter of sand, gravel, earthfill, boulders, pebbles, bugitis and guano, and fifty per cent (50%) of the market value of stalactites, stalagmites and other quarry minerals for the first offense; for the second offense confiscation and fine equivalent to not more than one hundred per cent (100%) of the market value of the product;
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> xxx xxx."

The "Verified Complaint" alleges that on March 3, 2006, plaintiff was assessed by the Provincial Treasurer of the amount of P283,930.50, representing sand and gravel tax ("SGT"); on March 29, 2006, plaintiff paid under protest the amount of P283,930.50 to the Provincial Treasurer; on April 17, 2006, the Provincial Treasurer wrote a letter to the plaintiff recognizing the amount of P283,930.50 tendered by plaintiff as payment for the sand and gravel tax under *Section 13 of Provincial Tax Ordinance 30*; plaintiff was assessed of P100.00 per cubic meter of quarry materials or the total amount of P2,839,305.00, as penalty imposed on owners/drivers/haulers of quarry materials who failed to present the required documents needed in the transport thereof pursuant to *Section 18 of Provincial Tax Ordinance 30* and *Section 9 of Ordinance 24*; plaintiff's payment of P283,930.50 was considered by the Provincial Treasurer as partial payment of the total assessed penalty of

P2,839,305.00; and plaintiff's purchases from legitimate permit holders/concessionaires shall be taxed at P10.00 per cubic meter, provided, documents relative thereto shall be submitted to respondent's office.

The Verified Complaint further alleges that in a Letter dated April 25, 2006, plaintiff protested the assessments in respondent's Letter dated April 17, 2006 on the following grounds:

1) Plaintiff did not violate *Section 13 of Provincial Tax Ordinance 30* because said section imposes the tax to quarry permittee, and plaintiff is not a quarry permittee, but a buyer of aggregate materials;
2) To impose additional 10% sand, gravel and quarry resources tax to the plaintiff would amount to double taxation since the Province of Camarines Sur had already imposed the same tax to quarry operator or permittee from whom plaintiff bought the materials for his various government projects;
3) Plaintiff did not violate *Section 18 of Provincial Tax Ordinance 30* because the P100.00 per cubic meter can only be imposed to truck drivers and haulers of sand, etc who failed to present delivery receipt upon demand and after conviction;

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4) The imposition of penalty of P100.00 per cubic meter under *Section 9 of Ordinance 24* is for failure of transporter of forest, mineral and aquatic products to bring the necessary documents during transport. There was no record or evidence that plaintiff's delivery trucks were apprehended and caught transporting mineral products without the necessary documents required under *Section 4 of Ordinance 24*.

5) Moreover, the provision of *Section 9 of Ordinance 24* can only be imposed if the violator has already been found guilty by a competent court;

that on October 11, 2006, the Provincial Treasurer assessed plaintiff the amount of P2,631,306.60, representing the balance of penalties for 26,313.066 cubic meters of quarry materials delivered by plaintiff to his projects at the Department of Public Works and Highways for the years 2004 and 2005; plaintiff filed an action for injunction before the RTC of Naga City, Branch 19, docketed as Special Civil Action No. 2006-0107, which was dismissed in its decision dated November 11, 2008; plaintiff then appealed said RTC Decision to the Court of Appeals, which dismissed the petition for lack of jurisdiction; the dismissal by the Court of Appeals was elevated by the plaintiff to the Supreme Court via a

Petition for Review on Certiorari under *Rule 45 of the 1997 Rules of Civil Procedure, as amended*, docketed as G.R. Nos. 190878 and 199214; said Petition for Review on Certiorari was subsequently withdrawn by the plaintiff for the reason that plaintiff believed that the RTC where the original action was commenced, has no jurisdiction over the action.

In his "Verified Complaint", plaintiff is invoking the exclusive original jurisdiction over tax collection cases of the CTA in Division under *Section 7(c)(1) of RA 9282*. However, a perusal of the "Verified Complaint" shows that plaintiff is actually seeking for the declaration as an absolute nullity of the act of defendant Provincial Treasurer of Camarines Sur: 1) in assessing plaintiff the 10% sand, gravel and quarry resources tax under *Section 13 of Provincial Tax Ordinance 30*; and 2) in assessing and demanding from plaintiff the amount of P2,631,306.60 as penalty on the 26,313.066 cubic meters of quarry materials delivered to the DPWH based on *Section 18 of Provincial Tax Ordinance 30* and *Section 9 of Ordinance 24*.

Assessment of 10% Sand, Gravel and Quarry Resources Tax under Section 13 of Provincial Tax Ordinance 30 – Part of Plaintiff's First Cause of Action and Fourth Cause of Action

As to the assessment of 10% sand, gravel and quarry resources tax under *Section 13 of Provincial Tax Ordinance 30*, *Section 195 of the Local Government Code* ("LGC") provides:

> "SECTION 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

Pursuant to the above provision, the remedy of a taxpayer assessed by the local treasurer is to file a written protest with the local treasurer contesting the assessment, within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to

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be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed herein within which to appeal to the court of competent jurisdiction; otherwise the assessment becomes conclusive and unappealable.

In the case of *Yamane vs. Lepanto Condominium Corporation, 474 SCRA 267,* the Supreme Court ruled that the review taken by the Regional Trial Court ("RTC") over the denial of the protest by the local treasurer would fall within the RTC's original jurisdiction since the review is the initial judicial cognizance of the matter. Labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official.

The proper remedy of a taxpayer from the adverse decision of the RTC is to appeal the RTC decision to the Court of Tax Appeals under *Section 7 (a) (3) of RA 9282*, in relation to *Section 11 of the same Act*, which provides, as follows:

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

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

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(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;"

While *Section 11 of RA 9282* provides:

"SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. *Provided, however*, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

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However, a perusal of the "Verified Complaint" shows that although plaintiff protested the assessment of the Provincial Treasurer of Camarines Sur on April 25, 2006, and assailed the action of the Provincial Treasurer before the RTC of Naga City, plaintiff, however, appealed the RTC Decision dated November 11, 2008 dismissing his case to the Court of Appeals, instead of appealing it to the CTA in Division. Clearly, plaintiff appealed the RTC Decision dated November 11, 2008 to the wrong court.

Even if we consider the present "Verified Complaint" as an appeal from the RTC Decision to the CTA, still the remedy resorted to by the plaintiff is erroneous for the following reasons:

1) Pursuant to *Section 7 (a) (3) of RA 9282*, in relation to *Section 11 of the same Act*, an appeal from the RTC Decision over a tax case under *Section 195 of the LGC* rendered by the RTC in the exercise of its original jurisdiction, is taken by filing a "Petition for Review" with the CTA in Division, under a procedure analogous to that provided for under *Rule 42 of the 1997 Revised Rules of Civil Procedure, as amended.* Here, what was filed by plaintiff is a "Verified Complaint", an original action.

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2) In this case, plaintiff is invoking the CTA's exclusive original jurisdiction over tax collection cases involving final and executory assessments for taxes, fees, charges and penalties under *Section 7 (c) (1) of RA 9282.* But, based on the allegations of the Verified Complaint, it is not a tax collection case.

Finally, *assuming arguendo* we allow the above infirmities and consider plaintiff's "Verified Complaint" as an appeal from the RTC Decision to the CTA in Division under *Section 7 (a) (3) of RA 9282,* still the CTA has no more jurisdiction over plaintiff's "Verified Complaint".

Section 3 (a), Rule 8 of the 2005 Revised Rules of the CTA, as amended, provides:

> "SEC. 3. Who may appeal; period to file petition. –
>
> (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessment or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling** or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on disputed assessments. xxx" *(emphasis supplied)*

Paragraph 11 of the Verified Complaint avers that the RTC Decision was issued on November 11, 2008, however plaintiff filed the "Verified Complaint" with the CTA in Division only on June 21, 2012, more than three (3) years after the RTC has rendered its decision, and way beyond the 30-day prescribed period. Evidently, the CTA has no more jurisdiction over plaintiff's "Verified Complaint".

Assessment of P2,631,306.60 as penalty on the 26,313.066 cubic meters of quarry materials delivered to the DPWH based on Section 9 of Ordinance 24 – Plaintiff's Second Cause of Action

As regards the assessment of P2,631,306.60 as penalty on the 26,313.066 cubic meters of quarry materials delivered by the plaintiff to the DPWH under *Section 9 of Ordinance 24*, which imposes a fine of P100.00 to owner/buyer of mineral products for failure of the transporter to bring the delivery receipt issued by the provincial government, the CTA has no jurisdiction over said assessment for penalty.

Section 9 of Ordinance 24, which imposes a fine of P100.00 per cubic meter of the material being transported for failure to bring or present the delivery receipt required is not an exercise of the taxing power of the Provincial Government of Camarines Sur, but it is an exercise of its police power.

Ordinance 24, otherwise known as *"An Ordinance Requiring Transporters of Forest, Mineral and Aquatic Products to Bring the Necessary Documents During the Transport of Said Product Within the Province and Providing Penalty Therefore"* was enacted as a result of *Resolution No. 135-A, Series of 1994*, which provides, as follows:

> "WHEREAS, the **provincial Government has the duty to protect the environment and impose appropriate penalty for acts that endanger the environment**;
>
> WHEREAS, in most cases it is observed that forest, mineral and aquatic products are transported in and out of the province without the transporter carrying the necessary documents;
>
> **WHEREAS, the purpose of this ordinance is to make the necessary monitoring in the utilization of natural resources.** Ensuring that transporters comply with their obligation to the government and give preference to those who complied as against illegal ones;
>
> xxx xxx" *(emphasis supplied)*.

Section 16 of the LGC on general welfare clause vests every local government unit to 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

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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.

In the case of *Rural Bank of Makati, Inc. vs. Municipality of Makati, 433 SCRA 371-372*, the Supreme Court ruled:

> "The general welfare clause has two branches. The first, known as the *general legislative power*, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the *police power proper*, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property.
>
> In the present case, the ordinances imposing licenses and requiring permits for any business establishment, for purposes of regulation enacted by the municipal council of Makati, fall within the purview of the first branch of the general welfare clause. xxx"

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In the same manner, *Ordinance 24* imposing a fine of P100.00 to owner/buyer of mineral products for failure of the transporter to bring the delivery receipt issued by the provincial government is an exercise of the general legislative power of the police power of the Province of Camarines Sur.

Being an exercise of police power, the CTA has no jurisdiction to review the decision of the RTC over *Ordinance 24*. As heretofore discussed, the jurisdiction of the CTA is limited only to those prescribed under *Section 7 of RA 9282*.

For lack of jurisdiction, therefore, we have no alternative, but to dismiss the "Verified Complaint".

WHEREFORE, premises considered, the "Verified Complaint" is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice